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8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 JUDY ANNE MIKOVITS,

13 Plaintiff,

14 vs.

15 ADAM GARCIA, JAMIE MCGUIRE,
16 RICHARD GAMMICK, GEOFF
DEAN, THREE UNIDENTIFIED
17 VENTURA COUNTY DEPUTY
SHERIFFS, F. HARVEY
WHITTEMORE, ANNETTE F.
18 WHITTEMORE, CARLI WEST
KINNE, WHITTEMORE-PETERSON
19 INSTITUTE, a Nevada corporation,
UNEVX INC., a Nevada corporation,
20 MICHAEL HILLERBY, KENNETH
HUNTER, GREG PARI and
21 VINCENT LOMBARDI,

22 Defendants.

Case No. CV 14-08909 SVW (PLAx)

Honorable Stephen V. Wilson

**DEFENDANT GEOFF DEAN'S
NOTICE OF MOTION AND
MOTION TO STRIKE
PLAINTIFF'S SECOND
AMENDED COMPLAINT
PURSUANT TO RULE 12(f), OR IN
THE ALTERNATIVE, DISMISS
SECOND AMENDED
COMPLAINT PURSUANT TO
RULE 12(b)(6); MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Date: February 22, 2016
Time: 1:30 p.m.
Crtm: 6

*[Request for Judicial Notice filed
concurrently herewith]*

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24
25
26 TO THE CLERK OF COURT, ALL PARTIES, AND THEIR
27 ATTORNEYS OF RECORD:

28 PLEASE TAKE NOTICE that on February 22, 2016, Defendant Sheriff

1 Geoff Dean (“Defendant”) will and hereby does move the Court to strike Plaintiff
2 Judy Anne Mikovits’ (“Plaintiff”) allegations against Defendant in the Second
3 Amended Complaint pursuant to Federal Rule of Civil Procedure 12(f); or in the
4 alternative dismiss the Second Amended Complaint as to Defendant pursuant to
5 Federal Rule of Civil Procedure 12(b)(6).

6 Under Rule 12(f), Defendant is requesting the Court strike all claims and
7 allegations against Defendant Dean on the grounds that Plaintiff’s Second
8 Amended Complaint alleges the same claims and accusations already adjudicated
9 by this Court when granting Summary Judgment for Defendant Dean previously.

10 In the alternative, under Rule 12(b)(6), Defendant is requesting the Court to
11 dismiss Plaintiff’s Second Amended Complaint, in its entirety, as to Defendant
12 Dean on the grounds that it fails to state facts sufficient to constitute a cause of
13 action against Defendant Dean.

14 The Motion is based on this Notice, the attached Memorandum of Points and
15 Authorities, Defendant’s Request for Judicial Notice, all of the pleadings on file
16 with the Court in this matter and on any matters that may be brought to the Court
17 to consider at the hearing on the Motion.

18 Counsel for Defendant contacted Plaintiff’s counsel on December 22, 2015
19 detailing the substance of this Motion and potential resolutions, in accordance with
20 Local Rule 7-3.

21
22 Dated: December 29, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

23
24 By /s/ Paul B. Beach

25 Paul B. Beach
26 James S. Eicher, Jr.
27 Jonathan C. Magno
28 Attorneys for Defendant
Geoff Dean

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

On December 15, 2015, Plaintiff filed her Second Amended Complaint and included Ventura County Sheriff Geoff Dean as a defendant despite the Court's previous order granting Summary Judgment as to Sheriff Dean on the identical claims contained within Plaintiff's First Amended Complaint.

The Court's granting of Summary Judgment in favor of Defendant Dean is now the law of the case, which precludes Plaintiff from bringing identical causes of action against Defendant Dean in her Second Amended Complaint.

II. PROCEUDRAL HISTORY.

On November 17, 2014, Plaintiff filed a *pro se* Complaint against 12 named defendants, including Defendant Dean, and three unidentified Ventura County Deputy Sheriffs ("VCDS"). Docket ("Dkt.") 1. The Court held a hearing on June, 15, 2015, and dismissed the Complaint, allowing Plaintiff leave to amend. Dkt. 89. On July 27, 2015, Plaintiff filed her First Amended Complaint ("FAC"). Dkt. 92. On August 13, 2015, Defendant Dean filed a Motion for Summary Judgment. Dkt. 100. On September 7, 2015 Plaintiff filed her Opposition to Motion for Summary Judgment along with her Statement of Genuine Disputes. Dkt. 120 and Dkt. 120-1. Also on September 7, 2015, Plaintiff filed an Affidavit in Opposition to Summary Judgment. Dkt. 120-2.

On November 24, 2015, this Court granted Defendant's Motion for Summary Judgment and dismissed Plaintiff's First Amended Complaint, generously giving Plaintiff leave to amend her Complaint as to the other defendants. Dkt. 142.

On December 15, 2015, Plaintiff filed her Second Amended Complaint ("SAC"), however, she still named Defendant Dean as a party. Dkt. 144.

In granting Defendant's Motion for Summary Judgment, this Court held that:

1 Sheriff Dean and VCSO had no role in issuing the criminal complaint or
2 warrant. (Dkt. 142, Page 2).

- 3 • Plaintiff's arrest was not made by Sheriff Dean or other VCSO
4 personnel. (Dkt. 142, Page 2).
- 5 • Plaintiff was arraigned on Tuesday, November 22, 2011 and represented
6 by an attorney at the hearing. (Dkt. 142, Page 2).
- 7 • Plaintiff was given instructions by the court to return to Reno, Nevada
8 and to turn herself in to law enforcement authorities. (Dkt. 142, Page
9 2).
- 10 • The charges against Plaintiff in Nevada were subsequently dismissed.
11 (Dkt. 142, Page 2).
- 12 • Though Plaintiff alleges that she was not photographed, not informed of
13 her charges, denied access to counsel, and not seen by a magistrate
14 immediately,...these claims are contradicted by other evidence....Dean
15 provided Plaintiff with a photograph taken from her booking which she
16 claims, without any evidentiary support, is in fact a forgery...Dean also
17 represents that he has provided Plaintiff with her fingerprint card and
18 the audio recordings of multiple telephone calls made while she was in
19 VCSO custody. (Dkt. 142, Page 4).

20 As a result, this Court concluded:

- 21 • Plaintiff had not introduced admissible evidence that could lead a
22 reasonable fact finder to conclude that Sheriff Dean was involved in a
23 larger plot against Plaintiff. (Dkt. 142, Page 3).
- 24 • Plaintiff's allegations of processing irregularities were speculative, if
25 not directly controverted. (Dkt. 142, Page 4).
- 26 • Plaintiff's uncontroverted allegations, at best, only established that her
27 time in jail was unpleasant and that she was not processed as fast as she
28 could have been. This, however, did not raise a reasonable inference

1 that Sheriff Dean violated Plaintiff's rights or had any involvement with
2 a conspiracy. (Dkt. 142, Page 4).

- 3 • Plaintiff's unsupported allegations regarding phone calls received by
4 Plaintiff's husband while Plaintiff was in VCSO custody were not
5 sufficient to authorize the extensive discovery that Plaintiff sought to
6 uncover whether Sheriff Dean had some connection with the alleged
7 conspiracy. (Dkt. 142, Page 4).
- 8 • Plaintiff's argument that the statute of limitations should be tolled by
9 California Government Code Section 945.3 was not applicable to the
10 facts of this case. (Dkt. 142, Page 5).
- 11 • The uncontroverted evidence established that Plaintiff's claim against
12 Sheriff Dean was time barred. (Dkt. 142, Page 3).
- 13 • There was no genuine issue of material fact and no reasonable fact
14 finder could find against Dean. (Dkt. 142, Page 5).
- 15 • Defendant Dean's motion for summary judgment is granted. (Dkt. 142,
16 Page 6).

17 Despite this Court's granting of Defendant's Motion for Summary
18 Judgment, Plaintiff has re-alleged the same claims and accusations against the
19 Defendant that have already been adjudicated.

20 **III. LEGAL ARGUMENT.**

21 **A. THE COURT SHOULD STRIKE PLAINTIFF'S** 22 **ALLEGATIONS AGAINST DEFENDANT DEAN UNDER RULE** 23 **12(f) DUE TO THEM BEING REDUNDANT, IMMATERIAL, AND** 24 **IMPERTINENT BASED ON THE COURT'S PRIOR RULING.**

25 Fed. R. Civ. P. Rule 12(f) provides in pertinent part, "Upon motion made
26 by a party before responding to a pleading...the court may strike from a pleading
27 an insufficient defense or any redundant, immaterial, impertinent, or scandalous
28

1 matter.” *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir.
2 2010).

3 “Immaterial” matters are those which have no essential or important
4 relationship to the claim for relief; “impertinent” matters are statements that do
5 not pertain and are not necessary to the issues in question. *See, Fantasy, Inc. v.*
6 *Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (upheld the striking of allegations
7 based on them being barred by the statute of limitations and *res judicata*),
8 *overruled on other grounds*, 510 U.S. 517, 114 S.Ct. 1023 (1994). A motion to
9 strike is the primary method of reaching defects or objections to a pleading that
10 cannot be addressed by a motion to dismiss. While it can be used to attack an
11 entire pleading, it is more often used to attack portions thereof—i.e., even single
12 words or phrases. *See, Fantasy, Inc.*, 984 F.2d at 1527; *Day v. Moscow*, 955 F.2d
13 807, 811 (2nd Cir. 1992).

14 Based upon the prior granting of Summary Judgment for Defendant Dean,
15 Defendant requests that paragraphs 17, 72, 110, 128, 128, 135-137, 139, 142-144,
16 146, 149, 152, 154, 156, 158, and 160 of Plaintiff’s SAC be stricken as to naming
17 Defendant Dean or his agents as a party, based on them being redundant,
18 immaterial, and impertinent. Further, Defendant Dean requests that his name be
19 stricken from the Caption of the SAC, the heading on page 14, which states,
20 “SHERIFF DEAN,” and the heading on page 18, which states, “SHERRIF
21 DEAN” (sic). Defendant also requests that paragraphs 13, 75, 93-99, 114, and
22 133(c-e) of Plaintiff’s SAC be stricken, in their entirety, based on them being
23 duplicative allegations which the Court has already adjudicated, making them
24 redundant, immaterial, and impertinent.

25 Plaintiff’s SAC has duplicated many of her FAC’s claims and accusations
26 as to Defendant Dean. As seen in “Exhibit 1”, attached to this Motion, nearly all
27 of the paragraphs that either name or make allegations against Defendant Dean in
28 Plaintiff’s FAC are identical in her SAC. These duplicated allegations found in

1 the SAC have already been adjudicated, as reflected in the Court's granting of
2 Defendant's Summary Judgment Motion. Dkt. 142. The Court's ruling held, in
3 part, "Plaintiff's uncontroverted allegations, at best, only established that her time
4 in jail was unpleasant and that she was not processed as fast as she could have
5 been. **This, however, did not raise a reasonable inference that Sheriff Dean**
6 **violated Plaintiff's rights or had any involvement with a conspiracy.**"
7 (Emphasis added). Dkt. 142, page 4. Further, the Court ruled, "**There is no**
8 **genuine issue of material fact and no reasonable fact finder could find**
9 **against Dean.**" (Emphasis added). Dkt. 142, page 5.

10 In addition, Plaintiff has included allegations involving Defendant Dean,
11 specifically paragraphs 93-94 and 96-99 of the SAC, which should also be
12 stricken in their entirety. These claims and allegations against Defendant Dean,
13 while not previously set forth in the FAC, have already been addressed by the
14 Court in granting Summary Judgment for Defendant Dean. In paragraphs 93-94,
15 Plaintiff alleges that when she was stopped for speeding and a state trooper told
16 her that her record was clean this is evidence of a claimed conspiracy. However,
17 Plaintiff already made the same allegation in her Affidavit to Oppose Motion of
18 Summary Judgment. Dkt. 120-2, paragraphs 29-31. After reviewing this
19 Affidavit this Court held, as stated above, that there is no reasonable inference
20 that Defendant Dean had violated Plaintiff's rights or was involved in a
21 conspiracy. Dkt. 142, page 4.

22 In regard to paragraphs 96-99 of the SAC, Plaintiff alleges that threats by
23 Defendant Dean's counsel and a fraudulent booking photograph are further
24 evidence of a conspiracy and wire-fraud involving Defendant Dean. The Court,
25 however, already made it clear that, as to the booking photograph, "Dean
26 provided Plaintiff with a photograph taken from her booking which she claims,
27 **without any evidentiary support**, is in fact a forgery." (Emphasis added). Dkt.
28

1 142, page 4. Plaintiff has failed to provide any additional factual support to
2 bolster her claim.

3 Further, in paragraph 96 of the SAC, Plaintiff alleges that the “most solid
4 evidence of a conspiracy and wire-fraud” involving Defendant Dean came from
5 his counsel’s purported threats against Plaintiff unless she dismissed her civil
6 claims. Such a claim is unfounded and irrelevant as to Defendant Dean being
7 involved in any conspiracy. The allegations found in these paragraphs do not
8 provide any additional support for Plaintiff’s implied request that this Court look
9 beyond its holding. Thus, these allegations and claims against Defendant Dean,
10 as listed in paragraphs 93-94 and 96-99, should be stricken in their entirety as
11 being immaterial and impertinent.

12 Finally, Defendant requests that all these claims, accusations, and
13 allegations listed above against Defendant Dean in Plaintiff’s SAC be stricken
14 due to the Court’s holding, in granting Defendant’s Summary Judgment Motion,
15 that, **“The uncontroverted evidence established that Plaintiff’s claim against**
16 **Sheriff Dean was time barred.”** (Emphasis added). Dkt. 142, Page 3. Based on
17 this holding, which enforces the statute of limitations, all duplicative allegations
18 against Defendant Dean are immaterial and impertinent since the Plaintiff has
19 failed to provide any additional evidentiary support that would enable her to bring
20 a valid and timely claim against Defendant Dean.

21 Therefore, for the reasons set forth above, Defendant Dean requests that the
22 Court strike all claims, accusations, and allegations against him from the
23 Plaintiff’s SAC.¹

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27 ¹ For the convenience of the Court, Defendant Dean attaches as Exhibit 2 a true
28 and correct copy of Plaintiff’s Second Amended Complaint with the specific
portions lined out that Defendant requests stricken.

1 **B. IN THE ALTERNATIVE, UNDER RULE 12(b)(6),**
 2 **DEFENDANT REQUESTS THE COURT DISMISS THE SECOND**
 3 **AMENDED COMPLAINT, AS TO ALL ALLEGATIONS AND**
 4 **CLAIMS AGAINST DEFENDANT DEAN, BASED UPON THIS**
 5 **COURT’S PRIOR HOLDING WHICH IS NOW THE LAW OF THE**
 6 **CASE.**

7 Fed. R. Civ. P. Rule 12(b)(6) provides that an action will be dismissed for
 8 failure to state a claim upon which relief may be granted. A complaint properly
 9 states a claim that can overcome a Rule 12(b)(6) motion only when it gives the
 10 defendant “fair notice” of the claim and the “grounds upon which it rests”, and
 11 when the complaint’s factual allegations, taken as true, state a “plausible” claim
 12 for relief. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). Conclusory
 13 allegations of law or unwarranted inferences of fact urged by the nonmoving
 14 party are insufficient to defeat a motion to dismiss. *Ove v. Gwinn*, 264 F.3d 817,
 15 821 (9th Cir. 2001).

16 In addition, a court’s obligation to construe allegations in the light most
 17 favorable to the nonmoving party does not mean that those allegations must be
 18 construed in a light favorable to the nonmoving party, if such a construction
 19 cannot reasonably be made. *Id.* Moreover, dismissal is proper if there is either a
 20 “lack of a cognizable legal theory” or “the absence of sufficient facts alleged
 21 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d
 22 696, 699 (9th Cir. 1990).

23 The Court has already held, among other things, in the granting of
 24 Defendant’s Summary Judgment Motion that: (1) Plaintiff failed to raise a
 25 reasonable inference that Sheriff Dean violated Plaintiff’s rights or had any
 26 involvement with a conspiracy; (2) Plaintiff’s claims against Sheriff Dean are
 27 time barred; and (3) there is no genuine issue of material fact and no reasonable
 28 fact finder could find against Dean. Dkt. 142.

1 Based on the holdings of the Court, which acts as the law of the case, the
 2 continued claims and allegations against Defendant Dean should be dismissed.
 3 The “law of the case” doctrine generally precludes a court from “reconsidering an
 4 issue that already has been decided by the same court, or a higher court in the
 5 identical case.” *United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997);
 6 *Rodriguez v. County of Los Angeles*, 96 F.Supp.3d 990 (C.D. Cal. 2014). A
 7 judgment of the district court, until it is set aside or reversed, is the law of the
 8 case. In general, the “law of the case” doctrine contemplates that a legal decision
 9 made at one stage of proceedings should remain the law of that case throughout
 10 the litigation unless and until the decision is modified or overruled by a higher
 11 court. *Arizona v. California*, 460 U.S. 605(1983). Thus, pursuant to the law of
 12 the case, a court will generally refuse to reconsider an issue that has already been
 13 decided by the same court or a higher court in the same case. *Lucas Automotive*
 14 *Engineering, Inc. v. Bridgestone/Firestone, Inc.*, 275 F.3d 762 (9th Cir. 2001);
 15 *U.S. v. Matthews*, 643 F.3d 9 (1st Cir. 2011).

16 Here, Plaintiff has re-alleged the same constitutional claims in her SAC as
 17 she did in her FAC. As discussed above, in granting Defendant’s Summary
 18 Judgment Motion, the Court held that, “Plaintiff’s uncontroverted allegations, at
 19 best, only established that her time in jail was unpleasant and that she was not
 20 processed as fast as she could have been. This, however, did not raise a
 21 reasonable inference that Sheriff Dean violated Plaintiff’s rights or had any
 22 involvement with a conspiracy.”

23 It is unclear why Plaintiff has chosen to ignore the Court and its Order
 24 granting Defendant Dean’s Summary Judgment Motion. Plaintiff’s SAC attempts
 25 to re-allege the same claims against Sheriff Dean that were previously ruled upon
 26 by the Court. Not only did the Court hold that no reasonable fact-finder could
 27 rule against Defendant Dean, but the Court also found that Plaintiff’s claims
 28 against Sheriff Dean are time barred. The Court’s Order granting summary

1 judgment for Sheriff Dean is the law of the case and should now preclude
2 Plaintiff from renewing the same claims against Defendant Dean in her SAC.

3 Therefore, Plaintiff has failed to state a valid claim in her SAC against
4 Defendant Dean on which relief can be granted.

5 **IV. CONCLUSION.**

6 For the forgoing reasons, Defendant Dean respectfully submits that his
7 Motion be granted and that any allegations against Sheriff Dean be stricken from
8 Plaintiff's SAC, or, in the alternative, Plaintiff's SAC be dismissed as to
9 Defendant Dean without leave to amend.

10
11
12 Dated: December 29, 2015

LAWRENCE BEACH ALLEN & CHOI, PC

13 By /s/ Paul B. Beach

14 Paul B. Beach
15 James S. Eicher, Jr.
16 Jonathan C. Magno
17 Attorneys for Defendant
18 Geoff Dean
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