UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

SUHAIL NAJIM ABDULLAH AL SHIMARI *et al*.,	)	
Plaintiffs,	)	Case No. 1:08-cv-827 (LMB/JFA)
v.	)	
CACI PREMIER TECHNOLOGY, INC.	)	
Defendant.	)	
CACI PREMIER TECHNOLOGY, INC.,	)	
Third-Party Plaintiff,	)	
v.	)	
UNITED STATES OF AMERICA, and JOHN DOES 1-60,	)	
Third-Party Defendants.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION TO STRIKE DEFENDANT'S THIRD-PARTY COMPLAINT

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INTRODUCTION

It has been almost a decade since defendant CACI Premier Technology, Inc. ("CACI") received Plaintiffs' first amended complaint ("FAC") in 2008 alleging that CACI employees conspired and aided and abetted to commit acts of torture, war crimes, and cruel, inhuman, and degrading treatment upon them during Plaintiffs' detention at Abu Ghraib prison in Iraq. It has been more than nine years since the Court ordered in its November 12, 2008 Scheduling Order that "[a]ny motion to amend the pleadings or to join a party shall be made as soon as possible after counsel or the party becomes aware of the grounds for the motion." (Dkt. 75.) It has been almost nine years since CACI filed its answer in 2009 to the FAC. And it has been nearly five years since CACI received Plaintiffs' operative third amended complaint ("TAC"), which raises the same claims as those in the FAC.

Now, with trial at last approaching, and without leave of the Court as required under Rule 14, CACI has filed a third-party complaint against the United States and John Does that is years too late, based on a manifestly false premise, and likely to prejudice and delay resolution of Plaintiffs' case. CACI claims that its filing of the third-party complaint now is justified by recent statements from Plaintiffs that the case is primarily one of conspiracy and aiding and abetting. To the contrary, CACI has been aware of Plaintiffs' conspiracy and aiding and abetting claims *since 2008*, and has acknowledged and addressed those claims throughout multiple rounds of briefing in the district court and court of appeals over the past nine years. If CACI believed that the United States should be brought in, it could and should have asserted its third-party claims against the United States at the time of its original answer in 2009. Nothing in the TAC or subsequent discovery or other proceedings has changed the substance of Plaintiffs'

conspiracy and aiding and abetting allegations, and nothing justifies CACI's excessive delay in bringing third-party claims against the United States.

Having lost dispositive motion after dispositive motion—including repeated motions to dismiss pursuant to the political question doctrine—CACI's filing of a third-party complaint at this, the eleventh hour, is a transparent attempt to delay and prejudice Plaintiffs' long-fought pursuit of their day in court. Pursuant to Federal Rule of Procedure 14(a)(4), the Court should strike CACI's untimely third-party complaint.

STATEMENT OF FACTS

This litigation was commenced in 2008 by Iraqi victims of torture perpetrated at the infamous Abu Ghraib prison in 2003 and 2004 by certain United States military personnel acting in concert with and under the direction of civilian contractors employed by CACI to conduct interrogations at the prison. Plaintiff Al Shimari filed the first complaint in this action on June 30, 2008, alleging, among other counts, claims against CACI for torture, war crimes, and cruel, inhuman, and degrading treatment ("CIDT") brought pursuant to the Alien Tort Statute ("ATS"), including claims asserting liability for conspiracy and aiding and abetting. (Dkt. 2.) Joined by Plaintiffs Al-Zuba'e and Al-Ejaili (and then-Plaintiff Rashid),[1] the Plaintiffs filed the FAC on September 15, 2008. (Dkt. 28.)

The FAC contains the same ATS claims as Mr. Al Shimari's original complaint, including for conspiracy and aiding and abetting. With respect to the conspiracy allegations, the FAC alleged that CACI employees, among other acts, "directed that detainees be tortured," "instigated, directed, participated in, aided and abetted conduct towards detainees that clearly

[1] The claims of Mr. Rashid were dismissed by this Court without prejudice in early 2017 after he was detained in Iraq while attempting to travel to attend his deposition. (Dkt. 598-1, 607.) Mr. Rashid subsequently has been released without charge and plans to move to have his claims reinstated. (Dkt. 650.)

violated the Geneva Conventions, the Army Field Manual, and the laws of the United States," and "repeatedly conspired with military personnel to harm Plaintiffs." (Dkt. 28, ¶¶ 66-67, 71.) In the counts for conspiracy to commit torture, CIDT, and war crimes, the FAC stated that CACI was liable for conspiracy because it "set the conditions, directly and indirectly facilitated, ordered, acquiesced, confirmed, ratified, and conspired with others." (Dkt. 28, ¶¶ 120, 134, 149.) The FAC was explicit that the Plaintiffs' theory of liability involved CACI employees directing others to abuse Plaintiffs.

On November 12, 2008, Magistrate Judge Anderson entered the Rule 16(b) scheduling order in this case. (Dkt. 75.) This order required that "[a]ny motion to amend the pleadings or to join a party shall be made as soon as possible after counsel or the party becomes aware of the grounds for the motion." *Id.* at ¶ 6.

To the extent that CACI believed Plaintiffs' conspiracy and aiding and abetting claims justified a motion to join the United States, CACI itself demonstrated it was aware of the purported grounds for such a motion as early as October 2, 2008 when it filed its first of several motions to dismiss Plaintiffs' claims. (Dkt. 35.) In that motion, CACI argued that the FAC alleged "no contacts with a CACI PT employee" and so was "*entirely dependent* on the sufficiency of Plaintiffs' allegations of co-conspirator liability." (*Id*. at 23-24 (emphasis added).) The Court's opinion denying CACI's motion to dismiss the conspiracy claims also relied in part on Plaintiffs' accusations in the FAC that CACI employees "directed" the torture of detainees conducted by military co-conspirators. (Dkt. 94 at 68-69.) That the FAC named "three CACI employees who physically harmed Plaintiffs" (dkt. 53 at 29-30) in no way contradicts or negates Plaintiffs' allegations that CACI was also liable under conspiracy and aiding and abetting principles for the actions committed by its co-conspirators in the military.

Following the Court's March 18, 2009 Order denying dismissal of the conspiracy claims,[2] CACI filed its first answer on April 1, 2009. (Dkt. 107.) CACI raised no third-party claims in its answer.

CACI unsuccessfully appealed the Court's March 18, 2009 Order, and the case was eventually remanded to this Court in 2012. In its post-remand status report, CACI discussed the United States' amicus brief before the *en banc* panel of the Fourth Circuit—in which the United States supported the justiciability of Plaintiffs' torture claims—and its desire to take discovery from the United States, yet made no mention of impleading the United States as a party.[3] (Dkt. 143.) Prior to commencing discovery, in 2012, CACI again acknowledged that it was aware of the "heavy reliance" of Plaintiffs' claims on "a theory of co-conspirator liability": "The Amended Complaint does not allege that any of the plaintiffs had any contact with anyone affiliated with CACI. Rather, plaintiffs' claims *hinge entirely* on the allegation that CACI conspired with military and Executive Branch personnel to harm the Plaintiffs." (Dkt. 155, at 11, 14 (emphasis added).)

Plaintiffs filed their second amended complaint ("SAC") on December 26, 2012. (Dkt. 177.) As with the FAC, the SAC contained claims for torture, CIDT, and war crimes, along with conspiracy and aiding and abetting claims. The SAC continued to allege that CACI employees directed co-conspirator military personnel to abuse detainees and conspired to harm the Plaintiffs. (Dkt. 177 ¶¶ 64-65.) As shown by its motion to dismiss the SAC, CACI again understood the Plaintiffs to be making allegations that CACI was liable as a co-conspirator and

[2] The Order dismissed the ATS claims, which the Court subsequently reinstated on November 1, 2012 following remand from the Fourth Circuit. (Dkt. 159.)

[3] The United States submitted an amicus brief (4th Cir. 09-1335, dkt. 146) upon invitation from the *en banc* panel. (Dkt. 96).

that Plaintiffs were not relying on allegations that CACI employees personally abused the Plaintiffs. (Dkt. 181 at 5.) Plaintiffs were also clear in their opposition to that motion that their conspiracy theory did not require "Plaintiffs to allege that CACI employees physically abused the Plaintiffs by their own hands; by their very nature, conspiracies require no such thing." (Dkt. 189 at 3.) The Court granted CACI's motion to dismiss the conspiracy claims in the SAC. (Dkt. 215.) In a subsequent brief seeking a stay of conspiracy-related discovery, CACI reiterated its understanding that Plaintiffs had "proceeded largely on a conspiracy theory." (Dkt. 222 at 3.)

On March 19, 2013, the Court granted Plaintiffs leave to file the TAC (dkt. 227), which Plaintiffs did on March 28, 2013 (dkt. 251). The TAC asserts the same conspiracy and aiding and abetting claims. CACI once again moved to dismiss the conspiracy claims. (Dkt. 313.) And, again, CACI argued that the TAC did not allege that CACI employees directly mistreated Plaintiffs and that "Plaintiffs rely heavily on allegations that CACI PT employees ordered the MPs to implement harsh conditions upon detainees generally, or with respect to detainees other than Plaintiffs." (Dkt. 313 at 19.) Plaintiffs' opposition explained why these conspiracy and aiding and abetting allegations were legally sufficient, as CACI itself had recognized in other briefs. (Dkt. 387 at 19-20.)[4] Discovery closed on April 26, 2013, and the Court dismissed Plaintiffs' ATS and common law claims on June 25, 2013 on separate grounds, denying as moot CACI's motion to dismiss the conspiracy claims in the TAC and also the pending discovery motions. (Dkt. 460.)

Following the dismissal, Plaintiffs had two successful appeals to the Fourth Circuit—the first affirming jurisdiction over Alien Tort Statute claims and the second finding the political

[4] In its brief in support of staying conspiracy discovery, CACI (correctly) stated that "[a] fundamental feature of conspiracy claims is that a party to a conspiracy can be held liable for actions of co-conspirators in furtherance of the conspiracy, *even if the defendant had no involvement with the actions that injured the plaintiff*." (Dkt. 222 at 11 (emphasis added).)

question doctrine did not render this case nonjusticiable—in which Plaintiffs' theory of conspiracy and aiding and abetting liability was expressly discussed by both sides. In reinstating the case for a second time, the Court of Appeals held that Plaintiffs could proceed on claims arising from "unlawful" acts, because CACI could not avoid responsibility for such acts on the theory that the government had directed them. *Al Shimari v. CACI Premier Tech., Inc.*, 840 F.3d 147, 157-158 (4th Cir. 2016). This holding rendered immaterial to Plaintiffs' case any defense CACI might raise or claim CACI might make against the government for supposedly directing or authorizing it to commit unlawful acts, or for members of the military participating in the underlying violations.

Plaintiffs' case was remanded back to this Court in 2016. Only after the holding in the Fourth Circuit and for the first time in this long litigation, CACI raised in its November 16, 2016 post-remand status report the possibility of making the United States a party to this action. (Dkt. 564 at 21-23.) Yet rather than seek leave to implead the United States at that time or discuss filing claims against the United States, CACI merely suggested that the Court "invite the United States to participate in this action as an intervenor" for the purpose of resolving discovery issues or other issues "that require input, decision or action by the United States," and compared the request to the Fourth Circuit's invitation to have the United States file an amicus brief and participate in oral argument during the *en banc* decision. (*Id*.) CACI's first indication in this lengthy litigation that it was considering impleading the United States came in its December 27, 2017 status report, in which it revealed that it intended to file a third-party complaint against the United States. (Dkt. 659 at 3.)

CACI filed its third-party complaint against the United States and various John Does on January 17, 2018, including claims for indemnification, contribution, exoneration, and breach of

contract. (Dkt. 665.) CACI did not seek leave of the Court prior to filing its third-party complaint. CACI's third-party complaint focuses on the military's alleged formal control over CACI interrogators and also the military's interrogation rules of engagement—points CACI previously relied upon for its political question argument. (*Id.* at ¶¶ 14-21, 27-28.) CACI's claims for indemnification, contribution, and exoneration rest on allegations that it is only secondarily liable "for acts of mistreatment toward Plaintiffs that the United States and/or John Does 1-60 inflicted, directed, authorized, or permitted." (*Id*. at ¶ 38.)

The only explanation seemingly offered by CACI for its delay in impleading the United States is that the third-party complaint is "appropriate based on Plaintiffs' admissions with respect to the allegations in their Third Amended Complaint." (Dkt. 665 at 52.) The only "admissions" CACI references are statements made by Plaintiffs in connection with CACI's recent unsuccessful motion to dismiss the TAC. These purported "admissions" consist of statements by Plaintiffs reiterating that their case rests primarily on conspiracy and aiding and abetting liability, and that such liability is not dependent on CACI employees directly abusing the Plaintiffs. (*Id*.) As detailed above, this supposedly novel "admission" is the same position that Plaintiffs have taken repeatedly in a multiplicity of filings over nearly a decade of litigation in this case—in the FAC and thereafter—and it is a position CACI has consistently recognized since it moved to dismiss the FAC in 2008.

ARGUMENT

I. STANDARD

Rule 14 governs third-party practice in federal courts. It allows a defendant to file a complaint against a third-party "who is or may be liable to it for all or part of the claim against" the defendant. Fed. R. Civ. P. 14(a)(1). Third-party complaints can be brought without leave of

the Court if they are filed within fourteen days after service of the defendant's original answer.[5] *Id*. After that, a defendant must obtain leave of the Court. *Id.*

The plaintiff "may move to strike the third-party claim, to sever it, or to try it separately." Fed. R. Civ. P. 14(a)(4). Even if CACI had complied with Rule 14 and sought Court permission, whether to allow a third-party to be brought in is a matter of discretion for the Court. *Balt. & O. R. Co. v. Saunders*, 159 F.2d 481, 483-84 (4th Cir. 1947). Impleader should be liberally granted if it will prevent duplicate suits on the same matter, but is improper when it will prejudice the plaintiff. *Dishong v. Peabody Corp.*, 219 F.R.D. 382, 385 (E.D. Va. 2003). Factors considered by courts in deciding whether to allow impleader include prejudice to the plaintiffs, likelihood of delay, timeliness of the defendant's attempt to implead, whether the issues raised by the impleader are unrelated to the original suit and involve different issues and evidence, and whether the third-party claims are unduly complicated or meritorious. *See, e.g., id*.; *Crowley v. BWW Law Grp., LLC*, No. RDB-15-00607, 2016 U.S. Dist. LEXIS 119712, at *13-14 (D. Md. Sep. 6, 2016); *Lester v. SMC Transp., LLC*, No. 7:15CV00665, 2016 U.S. Dist. LEXIS 118946, at *30 (W.D. Va. Sep. 2, 2016); *United States v. Savoy Senior Hous. Corp.*, No. 6:06cv031, 2008 U.S. Dist. LEXIS 17850, at *4-7 (W.D. Va. Mar. 6, 2008); *see also Duke v. Reconstruction Fin. Corp.*, 209 F.2d 204, 209 (4th Cir. 1954) (affirming dismissal of third-party complaint because it raised issues not present in the main litigation and defendants were not prejudiced since they could bring a separate lawsuit); Fed. R. Civ. P. 14, advisory committee note, 1963 ("[T]he court has discretion to strike the third-party claim if it is obviously unmeritorious and can only delay or prejudice the disposition of the plaintiff's claim, or to sever

[5] Rule 14 was amended in 2009 to change the time period for filing without leave from ten days to fourteen days. Fed. R. Civ. P. 14, advisory committee note, 2009. The amendment is immaterial in this case given CACI's multi-year delay in filing its third-party complaint.

the third-party claim or accord it separate trial if confusion or prejudice would otherwise result.") No one factor is determinative. *Lester*, 2016 U.S. Dist. LEXIS 118946, at *30.

II. CACI'S THIRD-PARTY COMPLAINT VIOLATES RULE 14

If CACI planned to implead the United States for the claims of indemnification, contribution, and exoneration, it should have done so at the time it filed its original answer to the FAC in 2009. The FAC put CACI on notice that Plaintiffs were bringing conspiracy and aiding and abetting claims based on CACI employees conspiring with military personnel to abuse detainees, including that CACI "set the conditions, directly and indirectly facilitated, ordered, acquiesced, confirmed, ratified, and conspired with others." (Dkt. 28, ¶¶ 120, 134, 149.) CACI's additional claim for breach of contract based on the discovery conduct of the United States in this litigation is independent of Plaintiffs' claims against CACI, and so cannot support a third-party complaint pursuant to Rule 14. *See* Fed. R. Civ. P. 14(a)(1) (impleader is limited to third parties that might be liable to the defendant for all or part of the plaintiff's claim against the defendant); *see also Crowley*, 2016 U.S. Dist. LEXIS 119712, at *14-15 (dismissing defendant's third-party breach of contract claim because it was not derivative of plaintiff's claim against defendant: "Whether the [third-party defendant] breached the contract is merely a separate inquiry stemming from the same underlying events"). CACI's third-party complaint is untimely pursuant to Rule 14.

Rule 14(a)(1) requires a party to bring a third-party claim within fourteen days of its "original answer": thereafter a party must seek leave of the court to do so. CACI filed its original answer on April 1, 2009. (Dkt. 107.) CACI filed its most recent answer and third-party complaint on January 17, 2018, nearly nine years later, without seeking leave from this Court to

file an untimely third-party complaint. Pursuant to the express language of Rule 14, CACI's third-party complaint is untimely and should therefore be stricken.

CACI cannot credibly claim that some change in Plaintiffs' allegations warrants treating its most recent answer as its "original answer." Courts have at times used a functional approach to determine whether an amended answer serves as an "original answer" for the purpose of Rule 14. Under this approach, "the 'original answer' can be an answer to an amended complaint, so long as the basis for impleader is that which is new, i.e. 'original,' in the answer to the amended complaint." *FTC v. Capital City Mortg. Corp.*, 186 F.R.D. 245, 247 (D.D.C. 1999); *see also Lester*, 2016 U.S. Dist. LEXIS 118946, at *32; *United Nat'l Ins. Corp. v. Jefferson Downs Corp*., 220 F.R.D. 456, 458 (M.D. La. 2003).

This functional approach does not help CACI. CACI is basing its claims on allegations that the United States and John Does are liable to it because they, as co-conspirators of CACI, mistreated the Plaintiffs. (Dkt. 665 at ¶ 38.) As detailed above, CACI was on notice of these parties as possible third-party defendants from the moment Plaintiffs filed the FAC in 2008, which alleged claims of conspiracy and aiding and abetting based on CACI employees conspiring with military personnel at Abu Ghraib to abuse detainees, including that "CACI employees repeatedly conspired with military personnel to harm Plaintiffs." (Dkt. 28, ¶¶ 64-66, 70-72.) Because CACI had notice of potential claims against the United States and John Doe co-conspirators in the FAC, its 2009 answer to the FAC is CACI's "original answer" for Rule 14 purposes. *See Lester*, 2016 U.S. Dist. LEXIS 118946, at *32. CACI's third-party complaint comes almost nine years too late.

III. CACI'S THIRD-PARTY COMPLAINT VIOLATES THE SCHEDULING ORDER

Similarly, CACI did not comply with the requirements of the 2008 Scheduling Order that "[a]ny motion to amend the pleadings or to join a party shall be made as soon as possible after counsel or the party becomes aware of the grounds for the motion." (Dkt. 75, ¶ 6.) As discussed above, CACI was on notice of Plaintiffs' conspiracy and aiding and abetting claims, and any potential claims against the United States they gave rise to, at the time of the FAC, which was filed prior to the 2008 Scheduling Order. Yet CACI made no motion to join the United States as a party despite being aware of the purported grounds for such a motion. CACI's belated attempt to add new parties violates the 2008 Scheduling Order.

IV. CACI'S THIRD-PARTY COMPLAINT WOULD UNDULY DELAY AND PREJUDICE PLAINTIFFS' LITIGATION

Even if CACI were to refile to seek leave to implead the United States, such a motion should be denied because of the delay it will cause in bringing Plaintiffs' claims to trial and the prejudice Plaintiffs will suffer. This case is nearly ten years old; Plaintiffs have litigated dozens of motions brought by CACI and have prevailed three times in lengthy appeals to the Fourth Circuit. Now that the case is on the eve of trial, Plaintiffs' persistent pursuit of justice should not be derailed by CACI's obvious ploy. The irrelevance and prejudicial nature of certain issues raised in CACI's third-party complaint also counsel rejection of CACI's attempt to implead new parties. Adding new parties and irrelevant issues now is contrary to the goal of judicial economy that underlies Rule 14. *See Clear-View Techs., Inc. v. Rasnick*, No. 13-cv-02744-BLF, 2015 U.S. Dist. LEXIS 37293, at *4 (N.D. Cal. Mar. 23, 2015) ("The purpose of Rule 14 is to promote judicial efficiency."); *Crews v. Cty. of Nassau*, 612 F. Supp. 2d 199, 218 (E.D.N.Y. 2009) ("[B]ecause the evidence and legal issues on the malpractice question are different, the judicial economy in having the third-party complaint as part of this lawsuit is substantially diminished.");

see also Lester, 2016 U.S. Dist. LEXIS 118946, at *32 (granting motion to strike untimely third-party complaint in part because if the defendant had instead brought the third-party complaint with its original answer, it "would have furthered the purpose of Rule 14: to secure a just, speedy, and inexpensive determination of the action" (citation and internal quotation marks omitted)).

Courts regularly reject attempts to implead parties when it will cause delays in resolving the primary litigation. In *Crews v. County of Nassau*, for example, the court denied a motion to allow impleader in part because discovery had already been underway—in that case, for only about *one year*—and adding a new party had "the potential to substantially delay the resolution of this action." 612 F. Supp. 2d at 218. The court in *Clear-View Technologies, Inc. v. Rasnick* also refused to grant the defendant leave to file a third-party complaint when the defendant's fifteen-month delay would have prejudiced plaintiff "by almost assuredly delaying trial," which was scheduled to start in three months. 2015 U.S. Dist. LEXIS 37293, at *10. Among the sources of delay, the court identified the need for the third-party defendant to respond to the third-party complaint, engage in discovery, and engage in motion practice, "making a short delay the best-case scenario." *Id*. at *11; *see also Savoy Senior Hous. Corp.*, 2008 U.S. Dist. LEXIS 17850, at *7-8 (denying leave to file new third-party complaint when "its interjection into this lawsuit at this point will unduly increase the cost and further delay this case.")

Here, adding the United States now will likely cause significant delays in resolving Plaintiffs' claims. General discovery in this case closed more than four years ago and the current parties have already engaged in extensive motion practice. Outside of a few outstanding discovery issues, the case is ready for dispositive motions and trial. As a new party, the United States would almost certainly move to dismiss the third-party complaint, potentially delaying the

case for months.[6] If that motion were unsuccessful, the United States would then have the option of engaging in, and would be subject to, party discovery. Resolution of Plaintiffs' claims, already inordinately delayed by years of appellate proceedings, would be further delayed to a degree impossible to even estimate at this time.

Adding new parties will also prejudice Plaintiffs by interjecting issues into the case that are irrelevant to Plaintiffs' claims and create the risk of jury confusion. CACI has made clear in its third-party complaint that it intends to raise, as part of its claims against the United States, allegations regarding the military's supposed control over CACI's actions and what interrogation techniques were approved by the United States. (Dkt. 665 at ¶¶ 14-21, 27-28.) CACI has already raised this issue as a defense throughout the prior nine years of litigation through its repeated invocation of the political question doctrine. Having failed to have this case rendered nonjusticiable under that defense, CACI is now seeking to sneak its same arguments through a side door—a third-party complaint. But as the Fourth Circuit and this Court made clear, these issues are irrelevant to Plaintiffs claims, which are based on CACI's unlawful behavior, conduct in violation of international norms that cannot be lawfully ordered by the military. *See Al Shimari*, 840 F.3d at 151 (holding that if the conduct at issue was unlawful, it is no defense under the political question doctrine that the United States directed CACI to engage in that conduct). Trying these issues along with Plaintiffs' claims will only confuse the jury as to whether CACI's conduct was supposedly authorized and deflect attention from the relevant issue of whether it was lawful under recognized international norms. These irrelevant issues prejudice Plaintiffs' case and unduly complicate this case, and so warrant striking the third-party complaint. *See Dishong*, 219 F.R.D. at 385-8; *see also Lester*, 2016 U.S. Dist. LEXIS 118946, at *33 (granting

[6] Plaintiffs take no position at this time on the merits of CACI's third-party claims.

motion to strike when resolving the factual issues raised in the third-party complaint "would undercut the purpose of Rule 14 and needlessly complicate the issues"). Moreover, CACI is not in any way prejudiced by striking its third-party claims in this case as it is free to pursue them in separate litigation once it makes payment on Plaintiffs' claims. *See Duke*, 209 F.2d at 209 (no prejudice to third-party plaintiffs when they could bring claims in state court); *Lester*, 2016 U.S. Dist. LEXIS 118946, at *33.

Finally, CACI has provided no plausible explanation for its delay in impleading the United States. CACI was on notice of its possible third-party claims against the United States and John Does since the 2008 FAC was filed. The explanation seemingly offered by CACI for its delay is that the third-party complaint is "appropriate based on Plaintiffs' admissions with respect to the allegations in their Third Amended Complaint." (Dkt. 665 at 52.) As detailed above, these "admissions," made in the course of CACI's latest unsuccessful motion to dismiss, revealed nothing new and reflect the view that both sides have had of Plaintiffs' claims since at least 2012. CACI's lack of justification for its delay is yet another reason to strike the third-party claims. *See, e.g.*, *Savoy Senior Hous. Corp.*, 2008 U.S. Dist. LEXIS 17850, at *7-8, 14-15 (denying motion for leave to file third-party complaint in part because the defendant offered no justification for the delay in impleading new third-party defendants nearly a year after filing his answer); *McDougald v. O.A.R.S. Cos.*, No. 1:04-CV-6057, 2006 U.S. Dist. LEXIS 22505, at *9 (E.D. Cal. Apr. 17, 2006) (granting motion to strike untimely third-party complaint in part because of unexplained delay). The court should reject CACI's attempt to substantially delay, complicate and prejudice Plaintiffs' case nearly ten years into this litigation and as the parties are finally closing in on trial.

CONCLUSION

For all of the foregoing reasons, CACI's third-party complaint should be stricken.

Respectfully submitted,

/s/ John Kenneth Zwerling

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2018, I electronically filed the Plaintiffs' Memorandum in Support of their Motion to Strike Defendant's Third-Party Complaint through the CM/ECF system, which sends notification to counsel for Defendants.

/s/ John Kenneth Zwerling
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