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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 PRIME HEALTHCARE SERVICES,
12 INC.,
13 Plaintiff,
14 v.
15 SERVICES EMPLOYEES
INTERNATIONAL UNION, ET AL.,
16 Defendants.
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Case No.: 14-cv-2553-GPC (RBB)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
SECOND AMENDED COMPLAINT
AND DENYING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
THIRD AMENDED COMPLAINT**

[ECF Nos. 74, 81]

20 **INTRODUCTION**

21 Plaintiff Prime Healthcare Services, Inc. ("Prime Healthcare" or "Plaintiff") brings
22 this civil action against Defendants Service Employees International Union ("SEIU"),
23 Service Employees International Union – United Healthcare Workers West ("UHW"),
24 Change to Win, CTW Investment Group, Mary Kay Henry, Dave Regan, and Tom
25 Woodruff (collectively, "Defendants") for alleged violations of the Racketeering
26 Influenced and Corrupt Organizations Act ("RICO") and the Labor Management and
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1 Relations Act (“LMRA”). (ECF No. 74.) Prime Healthcare alleges that these various
2 union-related entities and individuals are engaged in strong-armed, extortionate tactics and
3 other illegal conduct to enrich themselves through the acquisition of Prime Healthcare’s
4 property. (SAC ¶ 6, ECF No. 73.) Presently before the Court are Defendants’ motion to
5 dismiss Plaintiff’s Second Amended Complaint (“SAC”) (ECF No. 74), and Plaintiff’s
6 motion for leave to file a Third Amended Complaint (“TAC”) (ECF No. 81). The Parties
7 have fully briefed both motions. (ECF Nos. 77-79, 82-84.) The Court heard oral argument
8 on the motion to dismiss on August 28, 2015. (*See* ECF No. 80.) For the reasons set forth
9 below, the Court **GRANTS** Defendants’ motion to dismiss Plaintiff’s SAC and **DENIES**
10 Plaintiff’s motion for leave to file a TAC.

11 **FACTUAL BACKGROUND**

12 **A. The Parties**

13 Plaintiff Prime Healthcare is a hospital management company which, along with an
14 affiliated foundation, operates thirty-four acute care hospitals in eleven states, including
15 fifteen hospitals in California. (*Id.* ¶¶ 1, 22-23.) Prime Healthcare describes itself as
16 “largely non-union.” (*Id.* ¶ 3.)

17 Defendant SEIU is an unincorporated labor association that represents units of
18 workers and negotiates terms and conditions of employment for the workers it represents.
19 (*Id.* ¶ 24.) Defendant UHW is a local union affiliate of SEIU located in California. (*Id.*
20 ¶ 25.) UHW represents individuals working in California’s hospitals and clinics, including
21 nurses, aids, case managers, clerks, maintenance workers, and housekeeping staff, and
22 negotiates terms and conditions of employment for the healthcare workers it represents.
23 (*Id.*)

24 Defendant Change to Win (“CtW”) is a union federation made up of three member
25 unions: SEIU, the International Brotherhood of Teamsters, and the United Farm Workers
26 of America. (*Id.* ¶ 30.) Defendant CtW Investment Group is the investment arm of CtW.

1 (*Id.* ¶ 35.) Prime Healthcare alleges that CtW approves of SEIU’s tactics, and supports
2 them through CtW Investment Group. (*Id.* ¶¶ 31-35.)

3 The remaining Defendants are individual executives of the above entities.
4 Defendant Mary Kay Henry is the President of SEIU and Secretary-Treasurer of CtW. (*Id.*
5 ¶ 27.) Defendant Dave Regan is President of UHW, Vice President of SEIU, and Vice
6 President of the SEIU Leadership Council. (*Id.* ¶ 28.) Defendant Tom Woodruff is the
7 Executive Director of CtW’s Strategic Organizing Center, and also previously served as an
8 SEIU International Executive Vice President for more than a decade. (*Id.* ¶ 36.)

9 **B. Alleged Unlawful Conduct**

10 Prime Healthcare alleges that Defendants have unlawfully conspired to force Prime
11 Healthcare to unionize its hospitals through a “corporate campaign” that employs extortion.
12 (*Id.* ¶¶ 5, 8, 47.) According to the SAC, Defendants have allegedly:

- 13 • Attempted to thwart Prime Healthcare’s acquisition of additional hospitals;
- 14 • Produced false and misleading reports and studies for the sole purpose of damaging
15 Prime Healthcare’s business goodwill;
- 16 • Worked with complicit media outlets to publicize sham and baseless allegations;
- 17 • Initiated certain sham and baseless complaints causing regulatory and administrative
18 investigations, sham and baseless litigation, and inquiries by accreditation agencies;
- 19 • Coerced, harassed, and threatened patients who use Prime Healthcare’s services;
- 20 • Persuaded writers, government agencies, and politicians to raise specious allegations
21 about Prime Healthcare’s conduct;
- 22 • Targeted the California Hospital Association (“CHA”) with sham ballot initiatives
23 to obtain property of CHA member hospitals (including Prime Healthcare); and
- 24 • Violated federal labor laws.

25 (*Id.* ¶¶ 9, 115.)

26 The vast majority of these allegations are based upon conduct between 2010 and
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1 September 21, 2012. In its earlier order, the Court ruled that allegations based upon
2 activities before September 21, 2012 are barred under the doctrine of res judicata. To avoid
3 this ruling, Plaintiff has advanced a theory of admissibility which will be addressed herein
4 at section A.

5 Prime Healthcare alleges that through their extortionate activities, Defendants have
6 acquired and are attempting to acquire substantial money and property, including tens of
7 millions of dollars, Prime Healthcare's business goodwill, Prime Healthcare's rights to
8 grow its business through hospital acquisitions and oppose unionization of its employees,
9 Prime Healthcare's rights to make autonomous business decisions, access to Prime
10 Healthcare's private property, and Prime Healthcare's customers and related revenues. (*Id.*
11 ¶¶ 14, 113.)

12 **C. Prior Prime Healthcare Litigation**

13 On November 15, 2011, Prime Healthcare previously brought an antitrust action
14 alleging that SEIU, UHW, and several Kaiser-related entities had conspired to eliminate
15 Prime Healthcare from the healthcare services market and increase healthcare workers'
16 wages. *See Prime Healthcare Servs., Inc. v. Serv. Emps. Int'l Union*, No. 11-CV-2652-
17 GPC-RBB (S.D. Cal.) ("*Prime Healthcare I*"). On September 21, 2012, Prime Healthcare
18 filed a first amended complaint. (*Id.* at ECF No. 46.) On July 25, 2013, this Court
19 dismissed Prime Healthcare's first amended complaint under Federal Rule of Civil
20 Procedure 12(b)(6), but granted leave to amend. *See Prime Healthcare I*, 2013 WL
21 3873074 (S.D. Cal. July 25, 2013). After Prime Healthcare did not file a second amended
22 complaint, this Court granted the defendants' motion to dismiss with prejudice for lack of
23 prosecution under Federal Rule of Civil Procedure 41(b). *See id.* Prime Healthcare's
24 appeal of this Court's dismissal orders is still pending. *See Prime Healthcare I*, No. 13-
25 57185 (9th Cir.).

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PROCEDURAL HISTORY

On August 25, 2014, Prime Healthcare filed the instant action in the Northern District of California (“*Prime Healthcare II*”). (ECF No. 1.) On October 24, 2014, the Northern District of California ordered the case transferred to the Southern District of California. (ECF No. 38.) On November 14, 2014, the case was reassigned to the undersigned judge. (ECF No. 45.)

On November 17, 2014, Prime Healthcare filed its First Amended Complaint (“FAC”), which superseded its original complaint. (ECF Nos. 47, 52.) On December 16, 2014, Defendants filed a motion to dismiss the FAC. (ECF No. 50.) On April 1, 2015, the Court granted in part and denied in part Defendants’ motion to dismiss Prime Healthcare’s FAC, granting Prime Healthcare leave to amend “to correct the deficiencies [the Court] identified” if possible. (Order at 41, ECF No. 70.)

On May 1, 2015, Prime Healthcare filed the operative SAC, which superseded its FAC. (ECF Nos. 73, 47.) Prime Healthcare alleges eight RICO claims, 18 U.S.C. §§ 1961 *et seq.* (counts I-VIII), and three LMRA claims, 29 U.S.C. §§ 186 *et seq.* (counts IX-XI). (ECF No. 73 ¶¶ 323-94.)

On May 15, 2015, Defendants filed a motion to dismiss the SAC.¹ (ECF No. 74.)

¹ Defendants also filed a supporting request for judicial notice. (ECF No. 74-2.) Defendants seek judicial notice of exhibits to the Declaration of Bruce Harland in Support of Defendants’ Motion to Dismiss (ECF No. 74-3): (1) a March 10, 2015 press release entitled “Prime Healthcare Services Decides Not to Purchase Daughters of Charity Health System” (ECF No. 74-5); (2) a March 10, 2015 press release entitled “Attorney General Kamala D. Harris Issues Statement on Prime Healthcare Decision”; (3) a Notice from the State of California Department of Justice Office of the Attorney General entitled “Non-Profit Hospital Transactional Notices” (ECF No. 74-6); (4) a January 2, 2015 press release entitled “Nurses Rally & Testify to Oppose Sale to Prime” (ECF No. 74-7); (5) a January 4, 2015 press release entitled “First Attorney General Hearings on Fate of Daughters of Charity Hospitals Begin in LA on Monday” (ECF No. 74-8); (6) a December 30, 2014 press release entitled “Prime Healthcare Services Decides Not to Purchase Daughters of Charity Health System” (ECF No. 74-9); (7) a January 6, 2015 press release entitled “Public Hearings on Future of Four Bay Area Daughters of Charity Hospitals Start Wednesday” (ECF No. 74-

1 Prime Healthcare filed its opposition on July 24, 2015. (ECF No. 78.) Defendants filed
2 their reply on August 7, 2015. (ECF No. 78.) The Court held a motion hearing on August
3 28, 2015. (See ECF No. 80.)

4 On September 14, 2015, while the motion to dismiss was still pending, Plaintiff filed
5 a motion for leave to file a TAC. (Mot. Leave TAC, ECF No. 81.) Defendants filed a
6 response on October 23, 2015 (ECF No. 83) and Plaintiff filed a reply on November 6,
7 2015 (ECF No. 84).

8 LEGAL STANDARD

9 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the
10 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal
11 is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal theory.
12 *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *see also*
13 *Neitzke v. Williams*, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to dismiss
14 a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may be
15 dismissed where it presents a cognizable legal theory yet fails to plead essential facts under
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18 10); and (8) a March 13, 2015 order by U.S. District Judge Vince Chhabria in *Lynn Morris, et al. v.*
Daughters of Charity Health System, et al., Case No. 14-cv-04861-VC (N.D. Cal.) (ECF No. 74-11).

19 Under Federal Rule of Evidence 201, a court may take notice of facts not subject to reasonable dispute
20 that are capable of accurate and ready determination by resort to sources whose accuracy cannot
21 reasonably be questioned. Fed. R. Evid. 201(b). The Court finds that Defendants’ requests for judicial
22 notice are properly noticeable, and therefore takes judicial notice of the documents. *See United States ex*
rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (“[W]e ‘may
23 take notice of proceedings in other courts, both within and without the federal judicial system, if those
24 proceedings have a direct relation to matters at issue.’” (citation omitted)); *In re Tourism Assessment Fee*
Litig., No. 08-CV-1796-MMA, 2009 WL 10185458, at *4-5 (S.D. Cal. Feb. 19, 2009) (taking judicial
25 notice of press release on website); *United States v. 14.02 Acres*, 547 F.3d 943, 955 (9th Cir. 2008) (taking
26 judicial notice of records and reports of administrative bodies). To the extent that facts contained in the
27 judicially noticed documents are disputed, the Court only takes judicial notice of the existence of those
28 documents, and not for the truth of the matter asserted therein. *Lee v. Los Angeles*, 250 F.3d 668, 689-90
(9th Cir. 2001).

1 that theory. *Robertson*, 749 F.2d at 534. While a plaintiff need not give “detailed factual
2 allegations,” a plaintiff must plead sufficient facts that, if true, “raise a right to relief above
3 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007). “To
4 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
5 as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S.
6 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 547). A claim is facially plausible when
7 the factual allegations permit “the court to draw the reasonable inference that the defendant
8 is liable for the misconduct alleged.” *Id.* In other words, “the non-conclusory ‘factual
9 content,’ and reasonable inferences from that content, must be plausibly suggestive of a
10 claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th
11 Cir. 2009). “Determining whether a complaint states a plausible claim for relief will . . .
12 be a context-specific task that requires the reviewing court to draw on its judicial
13 experience and common sense.” *Iqbal*, 556 U.S. at 679.

14 In reviewing a motion to dismiss under Rule 12(b)(6), the court must assume the
15 truth of all factual allegations and must construe all inferences from them in the light most
16 favorable to the nonmoving party. *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 2002);
17 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). Legal conclusions,
18 however, need not be taken as true merely because they are cast in the form of factual
19 allegations. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1200 (9th Cir. 2003); *W. Mining Council*
20 *v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981). When ruling on a motion to dismiss, the court
21 may consider the facts alleged in the complaint, documents attached to the complaint,
22 documents relied upon but not attached to the complaint when authenticity is not contested,
23 and matters of which the court takes judicial notice. *Lee*, 250 F.3d at 688-89.

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1 **DISCUSSION**

2 **A. Res Judicata**

3 This Court previously granted Defendants’ motion to dismiss Prime Healthcare’s
4 claims premised on conduct previously alleged in Prime Healthcare’s antitrust action
5 against SEIU, UHW and others (*Prime Healthcare I*). (Order at 15, ECF No. 70.) The
6 Court held that the doctrine of res judicata—which prohibits lawsuits on claims that were
7 raised or could have been raised in a prior action—barred Prime Healthcare’s claims to the
8 extent they rested on allegations of conduct occurring prior to September 21, 2012, the date
9 on which Prime Healthcare filed its operative complaint in *Prime Healthcare I*. (*Id.*)

10 Defendants assert that the SAC continues to allege pre-September 21, 2012 conduct
11 that was or could have been raised in *Prime Healthcare I*. (*See, e.g.*, ECF No. 74 at ¶¶ 137-
12 39, 143-161.) Prime Healthcare responds that, although it is “precluded from recovering
13 damages based on barred conduct, it may rely on [pre-September 2012 predicate acts] from
14 an evidentiary standpoint . . . to support its RICO claims.” (Plf.’s Opp’n to Mot. Dismiss
15 SAC (“Opp’n”) at 12, ECF No. 78.)

16 Plaintiff relies on *Los Angeles NAACP v. Los Angeles Unified Sch. Dist.*, for the
17 proposition that evidence of claim-precluded acts alleged in a prior action could be
18 admitted as relevant to prove a later claim based on new conduct. *Los Angeles NAACP v.*
19 *Los Angeles Unified Sch. Dist.*, 750 F.2d 731, 740-41 (9th Cir. 1984) (hereinafter *NAACP*).
20 Simply stated, *NAACP* does not stand for the proposition that conduct barred under res
21 judicata can be relied upon to support a subsequent RICO claim. Instead, *NAACP* merely
22 concluded that a state court judgment alleging de facto segregation was entitled to
23 preclusive effect in a federal court action alleging de jure segregation, but only as to
24 segregative acts occurring prior to the close of trial in the state court action. *Id.*

25 In addition, Plaintiff also relies on *Molus v. Swan*, Case No. 15-cv-0452, 2007 WL
26 2326132 (S.D. Cal. 2007) to support its use of pre-September 2012 conduct to support its

1 RICO claims. However, *Molus* did not address whether conduct precluded by res judicata
2 can be used to establish a pattern of racketeering activity. Instead, it asked whether conduct
3 that occurred prior to the statute of limitations period could be used to establish a pattern
4 of racketeering activity. *Id* at *7. The court held that this evidence was admissible but
5 limited recovery on the RICO causes of action to damages that occurred within the
6 limitations period. *Id*. Given the markedly different policy considerations that underlie
7 res judicata and the statute of limitations, *Molus* is inapposite.

8 For the reasons set forth in detail in the Court’s April 1, 2015 Order (ECF No. 70),
9 Prime Healthcare’s RICO claims resting on allegations that were asserted or could have
10 been asserted in its prior antitrust action (*Prime Healthcare I*), are barred by the doctrine
11 of res judicata and will be disregarded in the Court’s review of the SAC. The Court now
12 turns to Plaintiff’s additional allegations of post-September 2012 conduct that are not
13 barred by claim preclusion.

14 **B. RICO Claims in SAC**

15 In the SAC, as in the FAC, Prime Healthcare alleges that Defendants have engaged
16 in racketeering activity by engaging in extortionate activities and violating 18 U.S.C.
17 § 1951 *et seq*, 18 U.S.C. § 1952, 29 U.S.C. § 186. The essence of the claims is that
18 Defendants are demanding that Prime Healthcare sign onto an “unlawful” May 2014
19 agreement between the California Hospital Association (“CHA”), various signatory CHA-
20 member hospitals, and UHW (“CHA-UHW Agreement”), and making such demands by
21 placing economic pressure on Prime Healthcare to do so. (SAC ¶¶ 247-317; 323-80, ECF
22 No. 73.) To allege a civil RICO claim, a plaintiff must allege: “(1) conduct (2) of an
23 enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate acts’) (5)
24 causing injury to plaintiff’s business or property.” *United Bhd. of Carpenters & Joiners of*
25 *Am. v. Bldg. & Const. Trades Dep’t, AFL-CIO* (“*UBC*”), 770 F.3d 834, 838 (9th Cir. 2014)
26 (citation and internal quotation marks omitted). “[R]acketeering activity’ includes . . .

1 ‘any act which is indictable’ under the Hobbs Act, 18 U.S.C. § 1951, or ‘any act or threat
2 involving . . . extortion . . . which is chargeable under State law.’” *Id.* (quoting 18 U.S.C.
3 §§ 1961(1)(A), (B)). The Hobbs Act defines extortion as “the obtaining of property from
4 another, with his consent, induced by *wrongful* use of actual or threatened force, violence,
5 or fear, or under color of official right.” 18 U.S.C. § 1951(b)(2) (emphasis added).
6 “Racketeering activity” also includes violations of § 302 of the LMRA. 18 U.S.C.
7 § 1961(1)(C).

8 LMRA § 302(a)(2) makes it unlawful for an employer to pay, lend, or deliver, “any
9 money or other thing of value” to a union, and § 302(b)(1) makes it unlawful for a union
10 to demand or accept the same. 29 U.S.C. §§ 186(a)(2), (b)(1). Congress enacted LMRA
11 § 302 to attack practices that were “inimical to the integrity of the collective bargaining
12 process,” including bribery by employers during collective bargaining, extortion by
13 employee representatives, and abuse of power by union officers who have sole control over
14 welfare funds. *Arroyo v. United States*, 359 U.S. 419, 425-26 (1959); *see also Turner v.*
15 *Local Union No. 302, Int’l Bhd. of Teamsters*, 604 F.2d 1219, 1227 (9th Cir. 1979) (“The
16 dominant purpose of § 302 is to prevent employers from tampering with the loyalty of
17 union officials and to prevent union officials from extorting tribute from employers.”).

18 The Court considers whether Prime Healthcare’s SAC sufficiently addresses the
19 deficiencies the Court identified in its Order dismissing Plaintiff’s FAC, first, with respect
20 to Plaintiff’s freestanding claim under § 302 of the LMRA (Count IX), second, with respect
21 to its RICO claim (Counts I-XIII) and, third, with respect to its LMRA § 303 claims
22 (Counts X & XI).

23 **1. LMRA § 302**

24 In its FAC, Plaintiff alleged that the CHA-UHW Agreement is unlawful under
25 LMRA § 302 for two reasons. First, Plaintiff challenged the lawfulness of the CHA-UHW
26 Agreement’s creation of a “Joint Advocacy Fund.” Second, Plaintiff challenged other
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1 “neutrality agreement” provisions setting ground rules for union organizing. The Court
2 held that Plaintiff failed to sufficiently allege that the Joint Advocacy Fund is not covered
3 by the LMCA exception and violates LMRA § 302 and that the neutrality agreement
4 provisions violates LMRA § 302. (Order at 17-25, ECF No. 70.) The Court provided
5 Plaintiff the opportunity to correct the foregoing deficiencies. (*Id.* at 41.) The Court now
6 considers whether Plaintiff’s SAC pleads new facts plausibly showing that the CHA-UHW
7 Agreement is unlawful under § 302 of the LMRA.

8 **a) The Joint Advocacy Fund Provision**

9 In its FAC, Plaintiff alleged that that CHA-UHW Agreement violates LMRA § 302
10 because it creates a Joint Advocacy Fund administered by a Labor Management
11 Cooperation Committee (“Committee”) funded in part by \$80 million from CHA and its
12 signatory hospitals, which constitutes an illegal direct payment to UHW. (FAC ¶¶ 228-40,
13 251-56, ECF No. 47.) The Court found Plaintiff’s allegations insufficient for two reasons.
14 First, § 302 explicitly excepts payments by employers through an industry-wide labor
15 management committee established under the Labor Management Cooperation Act of 1978
16 (“LMCA”), and Plaintiff acknowledges that the CHA-UHW Agreement limits spending to
17 purposes allowed under the LMCA. (Order at 18, ECF No. 70.) Second, Plaintiff
18 acknowledges that the money in the Joint Advocacy Fund may not be spent without the
19 equal approval of both the employer and UHW representative. (*Id.*) As such, the Court
20 held that Prime Healthcare’s speculation that despite these limitations UHW will
21 improperly use the money for its own ends did not pass the plausibility standard.

22 In its SAC, Prime Healthcare maintains that the Committee created under the CHA-
23 UHW Agreement that exclusively controls the Joint Advocacy Fund was not established
24 for the limited purposes permitted under the LMCA. (Opp’n at 12, ECF No. 78 (citing
25 SAC ¶¶ 270-72, 288-89, 301-02, ECF. No 73).) In support of its allegations, Prime
26 Healthcare pleads that under the CHA-UHW Agreement, UHW will use the employer
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1 contributions to the Joint Advocacy Fund to fund its campaign for Medi-Cal Reform in
2 California; become “one of the largest political action committees” in California; obtain
3 political power and influence; “further its extortionate conduct against Prime and other
4 non-union hospitals”; and “advance whatever agenda it chooses” without regard to the
5 limited purposes permitted by the LMCA. (SAC ¶ 284, ECF No. 73; *see also id.* ¶¶ 249-
6 53, 255, 257, 265, 271-72, 277-78, 284, 302.) According to Prime Healthcare, such
7 expenditures fall outside the limited purposes permitted under the LMCA, and thus the
8 CHA-UHW Agreement violates § 302 of the LMRA. (*See id.* ¶¶ 271, 284.)

9 Plaintiff alleges that UHW will use its political influence and employer contributions
10 to the Joint Advocacy Fund to finance its campaign for Medi-Cal reform “through
11 educational, legislative, regulatory, initiative or other strategies” aimed at increasing Medi-
12 Cal reimbursement to California hospitals and bringing about other improvements to
13 California’s delivery system “that [cannot] be obtained through direct negotiation between
14 employers and labor unions.” (*Id.* ¶ 250; *see also* ¶¶ 249-53.) Plaintiff maintains that these
15 expenditures expressly violate LMRA § 302 and 303. (*Id.* ¶ 249.)

16 Defendants respond that the LMCA, by its express terms, permits joint expenditure
17 of money by a joint labor-management committee “established for one or more” of seven
18 statutorily-enumerated “purposes,” the third and fourth of which are as follows: (3) to assist
19 workers and employers in solving problems of mutual concern not susceptible to resolution
20 within the collective bargaining process; (4) to study and explore ways of eliminating
21 potential problems which reduce the competitiveness and inhibit the economic
22 development of the plant, area or industry. *See* 29 U.S.C. § 186(c)(9). Defendants contend
23 that joint expenditure by CHA/hospitals and UHW to accomplish Medi-Cal reform “falls
24 squarely within both of these statutory purposes.” (Mot. Dismiss at 9, ECF No. 74.)

25 The Court finds that Joint Advocacy Fund expenditures in furtherance of Medi-Cal
26 reform are “joint labor-management committee” expenditures excepted under the LMCA.

1 See 29 U.S.C. § 186(c)(9). Problems with the existing Medi-Cal system are of mutual
2 concern to both hospital systems and workers that are “not susceptible to resolution within
3 the collective bargaining process” insofar as Medi-Cal reform requires government action.
4 Further, Medi-Cal reform is related to the competitiveness and the economic development
5 of the healthcare industry in California. As such, the Court finds that Plaintiff’s new
6 allegations regarding Medi-Cal reform do not sufficiently plead that the purpose of the Joint
7 Advocacy Fund falls outside the scope of the LMCA exceptions.

8 In support of its allegation that UHW will use money from the Joint Advocacy Fund
9 to gain political power and influence to become the “largest political action committee in
10 California” (SAC ¶ 285, ECF No. 73), Plaintiff alleges that UHW has created a new
11 campaign finance entity “Caring for Californians,” a “general purpose committee” (i.e., a
12 political action committee) which has spent “more than \$3 Million from the Joint Advocacy
13 Fund” on political contributions. (*Id.* ¶ 286.) Plaintiff avers that Caring for Californians
14 has contributed \$1 million to the California Democratic Party, \$500,000 to the California
15 Republican Party, \$605,000 to the Californians Allied for Patient Protection Independent
16 Expenditure Account, \$45,000 to Californians for Fiscal Accountability and
17 Responsibility, \$500,000 to the FAIRPAC Independent Expenditure Committee sponsored
18 by the Civil Justice Association of California, \$400,000 to the Orange County Dignity
19 PAC, and to Assemblymen Pan’s—“UHW’s close ally[‘s]”—State Senate campaign. (*Id.*
20 ¶¶ 286-87.) Plaintiff maintains that these expenditures fall outside the exceptions permitted
21 by the LMCA. (Opp’n at 12-13, ECF. No. 78; SAC ¶¶ 283-87, ECF No. 73.)

22 In fact, Prime Healthcare acknowledges that the money in the Joint Advocacy Fund
23 may not be spent without approval of both CHA’s CEO/President Dauner and UHW’s
24 President Regan. (*Id.* ¶ 255.) Prime Healthcare posits that this agreement is only on paper
25 that “[n]ot a single penny can be spent without Regan’s approval,” since “Dauner had
26 already demonstrated that he is under UHW’s control.” (*Id.*) As an example of the control

1 exercised by UHW over Dauner, Prime Healthcare presents the circular allegation that
2 Dauner “willingly exceeded his authority as CEO/President of CHA” and “violated CHA’s
3 By-Laws” by entering into the CHA-UHW Agreement. (*Id.* ¶ 247.) Plaintiff contends that
4 this shows that UHW has control over the monies paid into the Joint Advocacy Fund.
5 (Opp’n at 9, ECF No. 78 (citing SAC ¶¶ 17, 240-41, 246-47, 255, 269-75, 282, 302, ECF
6 No. 73).)

7 Plaintiff further alleges that the Joint Advocacy Fund’s focus is Medi-Cal reform.
8 (*See, e.g., id.* ¶ 251 (Per the MOU, “[T]he joint advocacy committee . . . shall focus during
9 the first two years of the MOU on . . . Medi-Cal Reform”); *see also id.* ¶¶ 249, 252-
10 53, 258, 271, 277, 284.) In light of Plaintiff’s own allegations, it is reasonable to infer that
11 the alleged political contributions were made for the purposes of advancing the
12 Committee’s Medi-Cal reform agenda, and thus for an excepted purpose under the LMCA
13 (“to assist workers and employers in solving problems of mutual concern not susceptible
14 to resolution within the collective bargaining process”). *See* 29 U.S.C. § 186(c)(9). That
15 Assemblyman Pan is a “close ally” of UHW or “has played an active role in Defendants’
16 campaign against Prime” (SAC ¶ 287, ECF No. 73) does not render the Committee’s
17 expenditures unlawful. Plaintiff does not proffer any facts supporting an inference that
18 these expenditures violate LMRA § 302.

19 Plaintiff maintains that its allegations and all inferences drawn therefrom must be
20 taken as true for purposes of this motion. However, as the Court noted in its previous
21 Order, it is the “non-conclusory ‘factual content,’ and reasonable inferences from that
22 content . . . [that] must be plausibly suggestive of a claim entitling plaintiff to relief.” *Moss*
23 572 F.3d at 969. The assertion that Dauner willingly exceeded his authority as CEO and
24 violated CHA’s By-Laws by entering the CHA-UHW is conclusory and unsupported by
25 any factual content. Even if Dauner willingly exceeded his authority as CEO/President of
26 CHA by entering into the CHA-UHW Agreement, this does not support the conclusion that
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1 UHW has ongoing control over the Joint Advocacy Fund. Plaintiff has not pleaded facts
2 suggesting that the Joint Advocacy Fund is “administered entirely by union leadership”
3 and “might serve as a ‘war chest[]’ to support union programs or political factions, or might
4 become [a] vehicle[] through which ‘racketeers’ accept[] bribes or extort[] money from
5 employers.” *United Mine Workers of Am. Health & Ret. Funds v. Robinson*, 455 U.S. 562,
6 572 (1982). The Court concludes that Prime Healthcare has again failed to sufficiently
7 allege that the Joint Advocacy Fund is not covered by the LMCA exception and violates
8 § 302 of the LMRA.²

9 **b) Neutrality Agreement Provisions**

10 In its FAC, Plaintiff attacked the legality of certain provisions in the CHA-UHW
11 Agreement bearing “the hallmarks” of an employer-union “neutrality agreement” but
12 having a much more “pervasive” reach. (FAC ¶ 217, ECF No. 47.) Plaintiff alleged that
13 Defendants are demanding that it sign the CHA-UHW Agreement, and therefore is
14 demanding that the following “thing[s] of value” in violation of LMRA § 302: that Plaintiff
15 (1) grant UHW “access rights” to non-union hospital employees (*id.* ¶¶ 218, 241-42); (2)
16 be “positive” about UHW in communications (*id.* ¶¶ 243-49); (3) refrain from advocating
17 against UHW through litigation (except to enforce the terms of an existing collective
18 bargaining agreement) or adverse action by any branch of government (*id.* ¶ 244); (4) give
19 UHW “control of its labor relations” by allowing the Committee to address “other mutually
20 agreed upon issues as permitted by the LMCA” (*id.* ¶¶ 250-52); and (5) make substantial
21 payments to the Joint Advocacy Fund (*id.* ¶¶ 215-16, 228-29). (ECF No. 57 at 26.) In
22

23
24 ² Defendants argue, in the alternative, that Prime Healthcare would not have a § 302 claim even if its
25 speculation and money in the Joint Advocacy Fund “will be” used for purposes “not in accordance with
26 the LMCA” at some future time. (Opp’n at 6, ECF No. 78 (citing *Local 144 Nursing Home Pension Fund*
27 *v. Demisay*, 508 U.S. 581 (1993).) Having determined that Prime Healthcare fails to sufficiently allege
28 that the Joint Advocacy Fund is not covered by the LMCA exception and violates § 302 of the LMRA,
the Court need not address Defendants’ argument in the alternative.

1 return, UHW would: (1) stop disparaging Prime Healthcare (FAC ¶¶ 219-20, ECF No. 47);
2 (2) stop pursuing, sponsoring, or supporting any anti-hospital industry legislation,
3 initiatives, or other efforts (*id.* ¶¶ 219, 221-22); and (3) provide its own substantial
4 payments to the Joint Advocacy Fund (*id.* ¶¶ 214-16, 219, 228-31). (ECF No. 57 at 26-
5 27.)

6 The Court previously concluded that the Joint Advocacy Fund does not violate
7 LMRA § 302, and that the other concessions made by CHA and the signatory hospitals,
8 and allegedly demanded by UHW from Prime Healthcare do not violate § 302 because they
9 do not plausibly involve bribery or other corrupt practices, which is what Congress sought
10 to prevent by enacting § 302. *See Arroyo*, 359 U.S. at 425-26. Rather, the concessions
11 serve the interests of both the CHA/hospitals and UHW “as they eliminate the potential for
12 hostile organizing campaigns in the workplace” which is “certainly . . . not inimical to the
13 collective bargaining process.” *Adcock v. Freightliner LLC*, 550 F.3d 369, 375 (4th Cir.
14 2008). The fact that the CHA-UHW Agreement, like any other labor agreement, “benefits
15 both parties with efficiency and cost saving does not transform it into a payment or delivery
16 of some benefit.” *Hotel Emps., Rest. Emps. Union Local 57 v. Sage Hospitality Res., LLC*,
17 390 F.3d 206, 219 (3d Cir. 2004). As such, the Court concluded that Plaintiff failed to
18 sufficiently allege that the neutrality agreement provisions violated LMRA § 302. (Order
19 at 25, ECF No. 70.)

20 In its SAC, Plaintiff continues to allege that, by attempting to coerce Plaintiff to enter
21 into the CHA-UHW Agreement, Defendants have demanded the Plaintiff provide
22 previously enumerated money and “things of value” to UHW. (*See, e.g.*, SAC ¶¶ 256, 259-
23 60, 290-301, ECF No. 73.) Additionally, Prime Healthcare alleges that the neutrality
24 agreement-like concessions made by CHA and signatory hospitals must be deemed
25 unlawful “things of value” under LMRA § 302 because they were given “[i]n exchange,
26 *quid pro quo*,” for various concessions made by UHW in favor of CHA and signatory
27

1 hospitals. (*See id.* ¶¶ 257, 287.) Plaintiff specifically notes the following allegedly
2 unlawful “things of value” under § 302: (1) UHW’s agreement to use its political influence
3 and money from CHA to “accomplish reform of the Medi-Cal system that would
4 substantially increase payments to California hospitals” (*id.* ¶¶ 249-54, 257-58); (2) CHA’s
5 commitment to publicly support UHW’s “Let’s Get Healthy California” initiative (*id.*
6 ¶¶ 256, 263); and (3) significant political influence to UHW (*id.* ¶¶ 276-79, 285-87).

7 The Court has already concluded that that the Joint Advocacy Fund does not violate
8 LMRA § 302. That a “key goal” of the Joint Advocacy Fund agenda is “Medi-Cal Reform
9 and funding for Medi-Cal payments to hospitals for services rendered to Medi-Cal
10 beneficiaries” (*id.* SAC ¶¶ 250-51), or the additional facts proffered by Plaintiff regarding
11 alleged *quid pro quo* concessions by CHA in support thereof, do not render the CHA-UHW
12 Agreement unlawful.³ As with the other allegedly unlawful concessions the Court has
13 addressed, these alleged concessions made by CHA and the signatory hospitals, and
14 allegedly demanded by UHW from Prime Healthcare, also do not violate § 302 because
15 they do not plausibly involve bribery or other corrupt practices which Congress sought to
16 prevent by enacting § 302. *See Arroyo*, 359 U.S. at 425-26.⁴

17 The Court concludes that Prime Healthcare fails to sufficiently allege that the
18 neutrality agreement provisions violate the LMRA § 302.

19
20 ³ On September 14, 2015, Plaintiff filed a Motion for Leave to File TAC. (ECF No. 81.) The TAC seeks
21 to add three paragraphs relating to the neutrality agreement, the existence of a multi-employer bargaining
22 group, and a *quid pro quo* arrangement between the CHA and UHW. (*Id.* at ¶¶ 246a, 258, 303a.) The
23 TAC alleges that CHA by an unidentified speaker described a *quid pro quo* relationship relating to
contingent access to employees if the Medi-Cal funding goal was reached. (*Id.* at ¶ 258a.) The Court
finds that the additional allegation fails to cure the deficiencies identified.

24 ⁴ In the proposed TAC, Plaintiff quotes an unidentified CHA representative who allegedly made a
25 statement on June 1, 2015 that the Unlawful Agreement “was [sic] not a neutrality agreement, it [sic] is
26 not [a neutrality agreement].” (ECF 81-2 ¶ 246a.) Given the lack of identifying information as to the
speaker and the ambiguity of this quote, the Court finds that these additional allegations do not plausibly
prove the existence of any unlawful agreement.

1 **2. RICO Claim Based on Extortion**

2 Having found that that Plaintiff has not adequately alleged a claim under LMRA
3 § 302, the Court next turns to whether Prime Healthcare’s SAC sufficiently states a RICO
4 claim premised on the predicate act of extortion under state law, the Hobbs Act or the
5 Travel Act.⁵ Under RICO, “extortion” requires: (1) “the obtaining of property from
6 another”; and (2) “wrongful use of actual or threatened force, violence, or fear, or under
7 the color of official right.” 18 U.S.C. § 1951(b)(2).⁶ Plaintiff urges, as alternate basis for
8 its RICO claims, that Defendants’ alleged use of economic pressure to induce Prime
9 Healthcare to sign the CHA-UHW Agreement amounts to extortion. (See SAC ¶¶ 212-36,
10 ECF No. 73.)

11 **a) The Obtaining of Property of Another**

12 To meet the first “obtaining of property from another” element, the plaintiff must
13

14 ⁵ The Travel Act, in relevant part, prohibits the use of “any facility in interstate commerce” to “carry on,
15 or facilitate . . . any unlawful activity,” which is defined to include certain specified crimes, including
16 “extortion.” 18 U.S.C. § 1952. The “unlawful activity” on which Plaintiff’s Travel Act claims are
17 premised are the alleged Hobbs Act extortion violations, and the viability of the Travel Act claim
18 necessarily hinges on the viability of the Hobbs Act claims.

19 ⁶ Plaintiff alleges that the “actions and events” described in the SAC constitute acts and threats that are
20 “separately chargeable as extortion under the laws of California, Kansas, New Jersey, and the District of
21 Columbia.” (SAC ¶ 112, ECF No. 73.) The Hobbs Act defines extortion as “the obtaining of property
22 from another, with his consent, induced by *wrongful* use of actual or threatened force, violence, or fear,
23 or under color of official right.” 18 U.S.C. § 1951(b)(2) (emphasis added). Like the Hobbs Act, state
24 extortion laws require the *wrongful* use of force or fear. See Cal. Penal Code § 518 (“Extortion is the
25 obtaining of property from another, with his consent . . . induced by a wrongful use of force or fear.”);
26 K.S.A. 21-6501 (Extortion is “intentionally and wrongfully demanding, soliciting or receiving anything
27 of value from the owner . . . by means of either a threat . . . or a promise”); N.J. Stat. Ann. § 2C:20-
28 5 (“A person extorts if he purposely threatens to (a) Inflict bodily injury on or physically confine or restrain
anyone or commit any other criminal offense.”); D.C. Code § 22-3251 (A person commits extortion if
“(1) that person obtains or attempts to obtain the property of another with the other's consent which was
induced by wrongful use of actual or threatened force or violence or by *wrongful* threat of economic
injury.”).

1 allege facts showing that the defendant has acquired or is seeking to acquire property from
2 the plaintiff that the defendant (or an allied third party) can “exercise, transfer, or sell.”
3 *Scheidler v. Nat’l Org. for Women, Inc.*, 537 U.S. 393, 404-05 (2003). The Supreme Court
4 has held that obtaining a property right is the defining characteristic of extortion, without
5 which a defendant is only alleged to have committed coercion. *Id.* at 407-08. Mere
6 coercion, interference, or deprivation without acquisition is not sufficient to constitute
7 extortion for a RICO claim. *Id.* at 404-08. In other words, this element “requires that the
8 victim ‘part with’ his property, and that the extortionist ‘gain possession’ of it.” *Sekhar v.*
9 *United States*, 133 S. Ct. 2720, 2725 (2013) (citations omitted). Because coercion is not a
10 predicate offense under RICO, the distinction between coercion and extortion is critical.
11 *Scheidler*, 537 U.S. at 408.

12 In its FAC, Prime Healthcare alleged that in addition to the CHA-UHW Agreement,
13 Defendants seek to obtain a litany of its tangible and intangible property. The Court
14 determined that Plaintiff failed to allege how Defendants would obtain most of its listed
15 property. Plaintiff’s allegations only established that Defendants sought to deprive
16 Plaintiff of these rights or to coerce Plaintiff to exercise these rights, rather than that
17 Defendants sought to acquire these rights. (Order at 28, ECF No. 70.)

18 In its SAC, Prime Healthcare makes almost identical allegations as in its FAC with
19 respect to the property Defendants allegedly seek to obtain: (1) Prime Healthcare’s
20 business reputation and goodwill (SAC ¶¶ 5, 7, 9, 13-14, 68, 232, 319, 329, 335, 341, 347,
21 353, 359, 365, 371, ECF No. 73); (2) Prime Healthcare’s current and potential customers
22 and related revenues (*id.*); (3) Prime Healthcare’s money in the form of payments to UHW
23 under the Unlawful Agreements and Prime Healthcare’s agreement to cede control over
24 how that money is spent (*id.* ¶ 113) and union dues paid to Defendants by Prime Healthcare
25 on behalf of its employees (*id.* ¶¶ 14, 68, 108, 113, 115, 326), as well as contributions by
26 Prime Healthcare to other funds benefitting Defendants, including but not limited to,

1 certain of Defendants’ pension funds (*id.* ¶¶ 14, 108, 115); (4) Prime Healthcare’s
2 autonomy and control over its business operations (*id.* ¶¶ 15, 71, 113); (5) Prime
3 Healthcare’s right guaranteed under Section 8(c) of the NLRA to voice its opinion about,
4 and/or opposition to, attempts to unionize its employees, by forcing Prime to waive such
5 right and remain neutral (*id.* ¶ 139); (6) Prime Healthcare’s right to refuse to recognize
6 UHW as bargaining agent of Prime Healthcare’s employees on the basis of signed union
7 authorization cards, by forcing Prime Healthcare to waive such right and to recognize
8 UHW as such bargaining agent on the basis of such cards (*id.* ¶ 70); (7) Prime Healthcare’s
9 right to engage in and grow its business through hospital acquisitions (*id.* ¶ 113); (8) access
10 to Prime Healthcare’s property to handle union affairs or to compel or intimidate non-union
11 employees into joining the unions (*id.* 113); and (9) Prime Healthcare’s control over
12 communications with its own employees and third parties (*id.* ¶ 113). The new allegations
13 in the SAC regarding property Defendants allegedly seek to obtain include: Prime
14 Healthcare’s money in the form of payments to UHW under the Unlawful Agreements and
15 Prime Healthcare’s agreement to cede control over how that money is spent (*id.* ¶ 14);
16 Prime’s confidential business information (e.g., names and contact information for non-
17 unionized employees) (*id.*); Prime’s right to hire subcontractors (*id.*); political power and
18 influence (*id.* ¶ 17); and commitment from Prime to support UHW’s Let’s Get Healthy
19 Initiative (*id.* ¶ 17). Plaintiff’s position is that each type of property Defendants are
20 allegedly seeking—tangible property, access to private property, control over business
21 assets, business goodwill, and communication rights—constitutes something of value that
22 than can be used, exercised, transferred or sold under the law. (Opp’n at 4, ECF No. 78
23 (citing SAC ¶¶ 114-22, ECF No. 73).)

24 In regards to Prime Healthcare’s intangible property, Prime Healthcare alleges that
25 “the LMRA mandates an automatic transfer of this property to Defendants immediately
26 upon unionization.” (Opp’n at 3, ECF No. 78 (citing SAC ¶ 106, ECF No. 73).) Prime
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1 Healthcare also avers that Defendants are “presently demanding even more property, prior
2 to unionization, as a condition to ceasing their campaign,” including “access rights to
3 Prime’s real property, further control over Prime’s ability to run its own business, further
4 control over Prime’s communication rights . . . and millions of dollars of Prime’s money
5 and control over how to spend it if Prime cedes to UHW’s demands to enter into the
6 Unlawful Agreements.” (*Id.* (citing SAC ¶¶ 107, 123, 133, ECF No. 73).)

7 Under the Hobbs Act, the property extorted must be “*transferable*—that is, capable
8 of passing from one person to another.” *Sekhar*, 133 S. Ct at 2725 (finding that petitioner’s
9 threats in an attempt to compel a general counsel to recommend that his employer approve
10 an investment was not “transferable” because petitioner’s goal was to force the general
11 counsel to give the advice that accorded with petitioner’s wishes, “not to acquire the
12 general counsel’s ‘intangible property right to give disinterested legal advice.’”) For the
13 reasons set forth in its Order dismissing the FAC, the Court holds that Plaintiff’s allegations
14 with respect to intangible property “fall short of satisfying the ‘obtaining’ prong of the
15 extortion statute” because Plaintiff does not allege that Defendants “obtained any of
16 [Plaintiff’s] property rights or property; at most it claims that [Defendants] improperly
17 coerced or attempted to coerce it to do something to which it was not otherwise inclined or
18 required to do.” *Wackenhut Corp. v. SEIU*, 593 F. Supp. 2d 1289, 1296 (S.D. Fla. 2009).
19 The Court is also not persuaded by Defendants’ citation to a Virginia district court case
20 holding otherwise. *Cf. Smithfield Foods, Inc. v. United Food & Commer. Workers Int’l*
21 *Union*, 585 F. Supp. 2d 789, 802 (E.D. Va. 2008) (allowing extortion claim to survive as a
22 RICO predicate where defendant sought not to obtain property but to force employer into
23 a contracting relationship) *with Wackenhut Corp.*, 593 F. Supp. 2d at 1295 (requiring both
24 deprivation and acquisition of property for extortion). That Defendants are presently
25 demanding intangible property does not affect the foregoing analysis.

26 With respect to tangible property, Prime Healthcare alleges that “Defendants are
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1 attempting to obtain through extortion substantial sums of money from Prime directly,”
2 which will be transferred to Defendants in the form of “union dues, increased wages for
3 represented worked, contribution to pension funds, payment of health plan fees and other
4 coverage costs and training funds,” or “paid to and controlled by UHW under the Unlawful
5 Agreements.” (SAC ¶ 115, ECF No. 73.) Prime Healthcare avers that “if [Defendants’]
6 demands are met, UHW [would] become[] the union representative of Prime’s employees,”
7 the tangible property identified above would “automatically transfer[]” to Defendants.
8 (Opp’n at 3, ECF No. 78 (citing SAC ¶¶ 105-11, ECF No. 73).)

9 First, the money that Prime Healthcare alleges Defendants are attempting to obtain
10 is made up of money that would be paid under the alleged unlawful agreements or paid if
11 Prime Healthcare’s employees chose UHW to represent them as their union. As to the first
12 scenario, the money would not be paid to the UHW directly; instead it would be paid to a
13 joint labor organization. As to the latter, the condition precedent depends on powers
14 outside of UHW’s control. The allegations regarding this tangible property are insufficient
15 to show extortion. Assuming that these allegations are sufficient to show Defendants are
16 seeking to “obtain” their tangible property, Prime Healthcare nonetheless must also meet
17 the second element required for generic extortion.

18 **b) Wrongful Use of Economic Pressure**

19 The second element of generic extortion requires the wrongful use of force, fear or
20 threats.⁷ See 18 U.S.C. § 1951(b)(2), *UBC*, 770 F.3d at 843. “Wrongful” under the Hobbs
21

22 ⁷ In order for a state offense to qualify as a predicate act in a RICO suit it must be “capable of being
23 generally classified as extortionate . . . [which is] defined as ‘obtaining something of value from another
24 with his consent induced by wrongful use of force, fear or threats.’” *Scheidler*, 537 U.S. at 409. Even if
25 defendants’ conduct is chargeable under state law and punishable by imprisonment for more than one
26 year, 18 U.S.C. § 1961(1)(A), “it cannot qualify as a predicate offense for a RICO suit unless it is ‘capable
27 of bring generally classified as extortionate.’” *Id.* at 409-10; *accord*, *United States v. Nardello*, 393 U.S.
28 296 (1969). Thus, in order to allege a predicate act under either the Hobbs Act or a state extortion statute,
Defendants’ alleged conduct must involve a “wrongful” use of force, fear or threats.

1 Act limits the statute's coverage to those instances where the obtaining of the property
2 would itself be “wrongful” because the alleged extortionist has no lawful claim to that
3 property. *Enmons*, 410 U.S. at 400. A violator’s action must be “wrongful” with respect
4 to both the means and ends. *See id.* (holding that the Hobbs Act does not apply to the use
5 of even wrongful force to obtain “legitimate” labor ends).

6 In its Order dismissing Plaintiff’s FAC, the Court held that Plaintiff failed to meet
7 the second “wrongful use” element to establish extortion. (Order at 31, ECF No. 70.) In
8 its SAC, Prime Healthcare continues to allege that Defendants are committing extortion by
9 using economic pressure to coerce Prime Healthcare to sign onto the “unlawful” CHA-
10 UHW Agreement. As in the FAC, Prime Healthcare alleges that Defendants threatened to
11 continue and then accelerated their campaign attacks by urging electing officials not to
12 accept political contributions from Prime Healthcare (SAC ¶¶ 311-15, ECF No. 73);
13 threatening to publish “dirt” on Prime Healthcare (*id.* ¶ 137); put Prime Healthcare’s
14 executives in jail (*id.* ¶ 138); publish legislation designed to hamstring Prime Healthcare’s
15 business (*id.* ¶ 139); and work to ensure that Prime Healthcare would not get approval for
16 the sale of DCHS hospitals from the California Attorney General (*id.* ¶ 142).⁸

17 While Plaintiff claims that Defendants have threatened harm, “there is nothing
18 inherently wrongful about the use of economic fear to obtain property.” *United States v.*
19 *Sturm*, 870 F.2d 769, 773 (1st Cir.1989). “[T]he fear of economic loss is a driving force of
20 our economy that plays an important role in many legitimate business transactions.”
21 *Brokerage Concepts, Inc.*, 140 F.3d at 523. Courts must therefore differentiate between
22 legitimate use of economic fear—hard bargaining—and wrongful use of such fear—
23 extortion. *See, e.g., George Lussier Enters., Inc. v. Subaru of New England, Inc.*, 393 F.3d

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26 ⁸ As noted above in the Discussion, *supra* Section A, the majority of these claims are based upon pre-
27 September 21, 2012 conduct, are inadmissible, and are not properly before the Court.

1 36, 50 (1st Cir.2004). A violator’s action must be “wrongful” with respect to both the
2 means and ends to meet the requirement for general extortion. *Enmons*, 410 U.S. at 400.

3 As discussed *supra*, the Court has already determined that Prime Healthcare failed
4 to sufficiently allege that the CHA-UHW Agreement was wrongful (i.e., unlawful) under
5 the LMRA. As such, the ends of the Defendants’ actions are not wrongful. Moreover,
6 Defendants’ alleged use of economic pressure to coerce Prime Healthcare to sign onto the
7 CHA-UHW Agreement constitutes the type of fear of economic loss that is legitimate as a
8 means of hard bargaining versus a wrongful use of such fear. The actions allegedly
9 threatened, since September 21, 2012, are ones that Defendants are entitled to take, e.g.
10 attempting to block the sale of hospitals. *Cf. McKay v. Retail Auto. Salesmen's Local Union*
11 *No. 1067*, 16 Cal.2d 311, 321 (1940) (“General rule” that “what you may do in a certain
12 event you may threaten to do, that is, give warning of your intention to do in that event,
13 and thus allow the other person the chance of avoiding the consequences.”). The Court
14 concludes that neither the means nor the ends of the Defendants’ actions are plausibly
15 “wrongful.”

16 The Court finds that Plaintiff has failed to plausibly allege a RICO predicate act of
17 “extortion.” Accordingly, the Court GRANTS Defendants’ motion to dismiss Prime
18 Healthcare’s LMRA § 302 and RICO claims.

19 **C. LMRA § 303**

20 LMRA § 303 makes it unlawful for a labor organization to engage in any activity or
21 conduct defined as an unfair labor practice in § 8(b)(4) of the NLRA. 29 U.S.C. § 187(a).
22 NLRA § 8(b)(4) makes it an unfair labor practice for a labor organization to “threaten,
23 coerce, or restrain any person engaged in commerce” with the object of “forcing or
24 requiring any employer . . . to join any labor or employer organization” 29 U.S.C.
25 § 158(b)(4)(ii)(A). The Court addresses whether Plaintiff has alleged a claim under LMRA
26 § 303, first in Count XI and second in Count X of its SAC.

1 untenable conditions” on the sale that were “so onerous that Prime was forced to abandon
2 the deal.” (SAC ¶ 191, ECF No. 73.) Defendants contend that on the face of Plaintiff’s
3 SAC, Plaintiff’s alleged injury—its lost opportunity to buy DCHS—was caused by the
4 Attorney General and not by the two acts of secondary pressure (ERISA lawsuit and SEC
5 investigation). (Mot. Dismiss at 16, ECF No. 74.)

6 Plaintiff alleges that Defendants’ acts of instigating the ERISA lawsuit and the SEC
7 investigation caused delays in the “internal DCHS process” for deciding whether to sell to
8 Prime Healthcare and required Plaintiff to expend “time money and resources” in
9 responding to these acts. (SAC ¶¶ 205-06, ECF No. 73.) The Court agrees with Defendants
10 that Plaintiff fails to sufficiently allege injury with respect to these secondary acts. DCHS
11 had approved the sale of six of its hospitals to Prime on or before October 10, 2014. (*Id.*
12 ¶ 189.) The ERISA lawsuit against DCHS was filed on October 21, 2014 and Defendants
13 “demanded” that the SEC investigate the DCHS on October 29, 2014. (*Id.* ¶¶ 193, 204.)
14 As such, these two acts could not have caused the delay in DCHS’s internal process to
15 approve the sale to Prime Healthcare nor Prime Healthcare’s expenditure of “time, money,
16 and resources” to defend against Defendants’ secondary acts in order to convince DCHS
17 to approve the sale, including by engaging legal counsel. (*Id.* ¶¶ 206-07.) By the time of
18 these acts of alleged secondary conduct, DCHS had already approved the sale.

19 Prime Healthcare also alleges that, in response to the picketing efforts by UHW to
20 stop DCHS from selling to Prime, Prime Healthcare also incurred “costs associated with
21 sending dozens of personnel . . . to attend the January 5, 7, and 8, 2015 [Attorney General]
22 hearings over the sale of the hospitals,” including “preparation time, gas, mileage on cars,
23 food, time away from work, and extra staffing to fill mixed shifts.” (*Id.* ¶ 208, ECF No.
24 73.) However, Plaintiff does not adequately allege a nexus between Defendants’ alleged
25 wrongful secondary activity and Plaintiff’s injury. None of the other allegations relied on
26 by Plaintiff are sufficient to show an injury under the LMRA § 303. (*See* Order at 33, ECF
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1 No. 70.) As such, the Court finds that Plaintiff lacks standing to proceed on the LMRA
2 § 303 claim contained in Count XI.

3 Having found that Plaintiff has not adequately alleged injury under LMRA § 303—
4 and therefore has not met the threshold of standing—the Court need not address whether
5 Plaintiff adequately alleges that Defendants’ conduct amounts to unlawful coercion under
6 NLRA § 8(b)(4), and concludes that Plaintiff lacks standing under LMRA § 303(a).
7 Accordingly, the Court GRANTS Defendants’ motion to dismiss Prime Healthcare’s
8 LMRA claim in Count XI.

9 **2. Count X**

10 In Count X, Prime Healthcare alleges that SEIU and UHW engaged in unlawful
11 coercive conduct under NLRA § 8(b)(4)(ii)(A), 29 U.S.C. § 158(b)(4)(ii)(A). Section
12 8(b)(4) of the NLRA states in pertinent part that:

13 “[i]t shall be an unfair labor practice for a labor organization or its agents . . .
14 to threaten, coerce, or restrain any person engaged in commerce or in an
15 industry affecting commerce, where in either case an object thereof is . . .
16 forcing or requiring any employer or self-employed person to join any labor
or employer organization”

17 29 U.S.C. § 158(b)(4)(ii)(A).

18 Prime Healthcare claims that Defendants tried to force it to join a “*de facto* multi-
19 employer bargaining group, with all rights over labor-related issues at signatory hospitals
20 assigned to the Committee controlled by CHA and UHW.” (SAC ¶¶ 383-85, ECF No. 73.)
21 Defendants contend that Prime Healthcare’s argument fails for two independent reasons.
22 First, Prime Healthcare fails to allege sufficient facts to show that the joint labor
23 management committee created by the “Unlawful Agreements” was a multi-employer
24 bargaining group. (Mot. Dismiss at 11-13, ECF No. 74.) Second, Prime Healthcare does
25 not sufficiently plead injury and coercion. (*Id.* at 14-15.) The Court addresses these
26 arguments in turn.

1 **a) “Multi-Employer Bargaining Group”**

2 Prime Healthcare contends that the “Unlawful Agreements” require that any
3 signatory hospitals concede control of its labor relations to UHW.” (SAC ¶ 299, ECF No.
4 73.) Plaintiff alleges several reasons to support its theory that the “Unlawful Agreements”
5 create a multi-employer bargaining group: the Code of Conduct establishing the scope of
6 the Committee (*id.* ¶ 300); that the Agreements relating to terms and conditions of
7 employment and Prime Healthcare specifically allege that multiple employers are
8 signatories to the CHA-UHW Agreements (*id.* ¶¶ 17, 128, 141, 262-63, 273, 289, 299,
9 385); the Agreements’ “catch-all” term (*id.* ¶ 301); and the Agreements’ decision-making
10 provisions regarding expenditures (*id.* ¶¶ 255, 302, 304).

11 Multi-employer bargaining is “collective-bargaining in which more than one
12 employer or an association of employers participate in common negotiations with a group
13 of group of unions as distinct from single-employer bargaining.” *Bel-Window*, 240
14 N.L.R.B. 1315, 1320-21 (1979), *rev’d* on other grounds sub nom. *H&D, Inc. v. NLRB*, 665
15 F.2d 257 (9th Cir. 2980). “There is nothing talismanic about the term ‘employer
16 organization.’” *Frito-Lay, Inc. v. Local Union No. 137*, 623 F.2d 1354, 1358 (9th Cir.
17 1980). The NLRB has formulated a court-approved test to determine whether a multi-
18 employer bargaining unit has been established. The test is whether the employer members
19 of the group have indicated from the outset an “unequivocal intention to be bound by group
20 action” in collective bargaining, and whether the union, being informed of the delegation
21 of bargaining authority to the group, has assented and entered into negotiations with the
22 group representative. *See, e.g., id.*; *NLRB v. Hart*, 453 F.2d 215, 217 (9th Cir. 1971), *cert.*
23 *denied*, 409 U.S. 844 (1972). “Substance rather than legalistic form” is all the Board has
24 ever required in multi-employer bargaining. *Frito-Lay*, 623 F.2d at 1358.

25 Prime Healthcare alleges that the MOU and Code of Conduct “require that all
26 signatories participate in the Committee and that all decisions of the Committee are to be
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1 made by UHW and its ally CHA.” (SAC ¶ 200, ECF No. 73.) Plaintiff alleges that the
2 Code of Conduct establishes the scope of the Committee, which includes “several core
3 labor relations issues,” including “jointly advocating for improved communication
4 between representatives of labor and management”; “supporting ‘the principle that
5 compensation should include as consideration of a pay for performance model’”; and
6 providing opportunities for healthcare workers and employers to improve working
7 relationships, explore new approaches to organization effectiveness, and enhancing
8 involvement of healthcare workers in making decisions affecting their working lives. (*Id.*
9 ¶ 300.) Plaintiff further alleges that both the MOU and Code of Conduct contain a “catch-
10 all” statement that “the Committee may also address other mutually agreed upon issues as
11 permitted by the LMCA.” (*Id.* ¶ 301.)

12 Defendants argue that none of Plaintiff’s arguments show “unequivocal intent” and
13 instead “rest on the specious assertion that Defendants created a multi-employer bargaining
14 group by giving the joint-labor management committee authority permitted under the
15 LMCA.” (Mot. Dismiss at 11, ECF No. 74.) Plaintiff responds that Defendants misstate
16 *Frito-Lay*, 623 F.2d at 1358, and “there is no need to delve into the issue of intent because
17 Prime has pled an agreement that expressly delegates bargaining authority to Duane
18 Dauner.” (Opp’n at 16, ECF No. 78 (citing SAC ¶¶ 255, 273, ECF No. 73).)

19 The Court finds that the express Code of Conduct provisions establishing the scope
20 of the Committee do not plausibly suggest that a multi-employer bargaining unit has been
21 established. Nor does the Court find persuasive Plaintiff’s argument that the “catch all”
22 provision suggests the same, as the catch-all provision is also limited to “issues as permitted
23 by the LMCA.” (*See* Order at 18, ECF No. 70.) None of these provisions authorize the
24 Committee to engage in collective bargaining with UHW. Plaintiff’s speculation that the
25 Committee will nonetheless exceed the scope of the Agreements and exercise control over
26 labor relations does not meet the plausibility standard. That the “very purpose of the
27
28

1 LMCA is ‘to encourage free collective bargaining’ though ‘the formation and operation of
2 labor management committees’” (Opp’n at 15, ECF No. 78 (citing 29 U.S.C. § 175a note))
3 does not mean that the Committee is a multi-employer bargaining unit that can collectively
4 bargain on behalf of members with respect to labor relations. Further, as discussed in its
5 previous Order and *supra* at 15, Prime Healthcare acknowledges that Committee
6 expenditures require 50/50 approval of both leaders of CHA and UHW. (*See, e.g.,* SAC
7 ¶ 255, ECF No. 73.) Plaintiff’s new allegations that Dauner is under Defendants’ control
8 (*id.* ¶¶ 246-47) and that that the Committee’s purpose is Medi-Cal reform (*see, e.g., id.* ¶
9 251) are inconsequential to the analysis.

10 In the proposed SAC, Plaintiff alleges that an unidentified CHA representative
11 announced publicly that the alleged Unlawful Agreements “cover[] both public and
12 employee/labor relations.” (ECF No. 81-2 at ¶ 303a.) The Court finds that this ambiguous
13 statement attributed to an unidentified speaker does not affect the Court’s determination as
14 to whether Defendants attempted to force Plaintiff to enter a multi-employer bargaining
15 group. Accordingly, the Court finds that Prime Healthcare has not sufficiently averred that
16 the alleged “Unlawful Agreements” create a multi-employer bargaining group.

17 **b) Standing**

18 LMRA § 303 confers standing to “[w]hoever shall be injured in his business or
19 property by reason o[f]” an unfair labor practice under NLRA § 8(b)(4). 29 U.S.C.
20 § 187(b). A court determines whether Section 303 standing exists by looking to: (1) the
21 nexus between the injury and the statutory violation; and (2) the relationship between the
22 injury alleged and the forms of injury that Congress sought to prevent or remedy by
23 enacting the statute. *Am. President Lines, Ltd.*, 721 F.3d at 1153 (9th Cir. 2013). To have
24 standing, Prime must plead both injury and coercion. *See id.*

25 Prime Healthcare alleges that, as a result of Defendants’ conduct to force Prime to
26 enter into the Unlawful Agreement and thereby join the multi-employer bargaining unit
27

1 created thereby, Prime Healthcare “has suffered substantial injury to its business or
2 property.” (SAC ¶ 386, ECF No. 73.) Plaintiff alleges that UHW engaged in this conduct
3 with the intent to injure Plaintiff, and Plaintiff has been injured as a result in violation of
4 Section 303(a) of the LMRA, including significant costs in the form of time, money and
5 resources in defending against UHW’s secondary conduct. (*Id.* ¶¶ 19, 205, 316; *see* Opp’n
6 at 18, ECF No. 78.)

7 As the Court noted in its previous Order, it is the “non-conclusory ‘factual content,’
8 and reasonable inferences from that content . . . [that] must be plausibly suggestive of a
9 claim entitling plaintiff to relief.” *Moss*, 572 F.3d at 969. Stripping Plaintiff’s pleading of
10 conclusory allegations regarding injury stemming from its Count X claims leaves only
11 “tens of thousands of dollars in legal fees” engaging its “legal counsel to review, evaluate
12 and provide legal advice regarding, attempt to negotiate different agreement, and,
13 ultimately, reject the Unlawful Agreements.” (SAC ¶ 317, ECF No. 73.) Defendants
14 contend that “attorneys’ fees are not an injury that Congress sought to prevent or remedy
15 by enacting LMRA § 303.” (Mot. Dismiss at 14, ECF No. 74.) Plaintiff maintains that
16 attorneys’ fees damages are “precisely the type [of damages] held recoverable under
17 Section 303 as compensatory damages caused by Defendants’ NLRA Section 8(b)(4)
18 violations.” (Opp’n at 18, ECF No 78.) Plaintiff states that attorneys’ fees are recoverable
19 because they are for “costs incurred to stop, mitigate, or otherwise deal with the union’s
20 unlawful activity,” rather than attorneys’ fees for litigation. (*Id.* at 19.)

21 Attorneys’ fees are not recoverable as damages in a suit brought under section 303
22 of the LMRA, 29 U.S.C. § 187, which authorizes an action for an employer that has been
23 injured by a union's unfair labor practice. *Summit Valley Indus. Inc. v. Local 112, United*
24 *Bhd. of Carpenters & Joiners of Am.*, 456 U.S. 717, 727 (1982) (finding that attorneys’
25 fees incurred during NLRB proceedings were not proper element of damages under LMRA
26 § 303(b) based on “persuasive evidence” of congressional intent); *see also Abreen Corp.*

1 *v. Laborers' Int'l Union, N.A., AFL, AFL-CIO*, 709 F.2d 748 (1st Cir. 1983) (declining to
2 award attorneys' fees incurred in an effort to stop unlawful secondary activity even though
3 the fees did not arise from actual litigation before the NLRB). Prime Healthcare alleges
4 that it incurred legal fees expressly to "defend[] itself from UHW's campaign to force it to
5 sign the Unlawful Agreements." (SAC ¶ 317, ECF No. 73.) As in *Aberdeen*, the Court
6 does not find that the fact that attorneys' fees did not arise from actual litigation
7 meaningfully distinguishes this case from *Summit Valley*. In both *Summit Valley* and the
8 instant case the attorneys' fees were incurred in order to achieve the termination of activity
9 allegedly unlawful under LMRA § 303. As such, the Court finds that Prime Healthcare
10 has not adequately pleaded injury with respect to Count X.

11 Having found that Plaintiff has not met the threshold of standing, it is unnecessary
12 to address whether Plaintiff adequately alleges that Defendants' conduct amounts to
13 coercion⁹ and concludes that Plaintiff lacks standing under LMRA § 303(a). Accordingly,
14 the Court GRANTS Defendants' motion to dismiss Prime Healthcare's LMRA claim in
15 Count X.

16 **D. THE SEIU AND CTW DEFENDANTS**

17 Defendants argue in the alternative that even assuming that Prime Healthcare
18 sufficiently pleads its LMRA and RICO claims, its complaint nonetheless fails under the
19 *Twombly* plausibility standard with respect to the SEIU Defendants' (the SEIU and its
20 President Mary Kay Henry) and CtW Defendants' (Change to Win, the CtW Investment
21

22 ⁹ Defendants argue that Plaintiff's allegations that Defendants threatened a campaign to urge elected
23 officials to reject Plaintiff's political contributions based on Defendants' purportedly false allegations
24 regarding patient care do not amount to coercion and constitute protected activity under First Amendment
25 and *Noerr-Pennington* protections. (Mot. Dismiss at 15, ECF No. 74 (citing *Boone v. Redevelopment*
26 *Agency of San Jose*, 841 F.2d 886, 894-95 (9th Cir. 1988).) Plaintiff responds that "all of Defendants'
27 coercive (and extortionate) conduct was part of the same campaign and had the same goal: forcing Prime
28 to sign the CHA-UHW agreements." (Opp'n at 20, ECF No. 78 (citing SAC ¶¶ 15, 18, 140-42, ECF No.
73).)

1 Group, and Thomas Woodruff) involvement in “new conduct.” (Mot. Dismiss at 23-25,
2 ECF No. 74.) Plaintiff responds that its pleading sufficiently details that the SEIU and
3 CtW Defendants “were not only the architects of [the campaign against Prime], but have
4 been and continue to be aware of it, agree to it, endorse it, participate in it, as well as aim
5 to profit from its success.” (Opp’n at 24, ECF No. 78.) Having found that dismissal is
6 warranted for the reasons set for above as to all Defendants, the Court need not address
7 whether Plaintiff’s allegations meet the *Twombly* standard for plausibility as to the SEIU
8 and CtW Defendants specifically.

9 DISMISSAL WITH PREJUDICE

10 After a party has amended a pleading once as a matter of course, it may only amend
11 further after obtaining leave of the court, or by consent of the adverse party. Fed. R. Civ.
12 P. 15(a). Amendment under Fed. R. Civ. Pro. 15(a) is discretionary, and is generally
13 permitted with “extreme liberality.” *Chodos v. West Publ'g Co.*, 292 F.3d 992, 1003 (9th
14 Cir. 2002) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th
15 Cir. 1990)). When a district court has already granted leave to amend, its discretion in
16 deciding subsequent motions to amend is “particularly broad.” *Wagh v. Metris Direct,*
17 *Inc.*, 363 F.3d 821, 830 (9th Cir. 2003), *overruled on other grounds by Odom v. Microsoft*
18 *Corp.*, 486 F.3d 541, 551 (9th Cir. 2007) (en banc); *Griggs v. Pace Am. Group, Inc.*, 170
19 F.3d 877, 879 (9th Cir. 1999). “[A] district court need not grant leave to amend where the
20 amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an
21 undue delay in litigation; or (4) is futile.” *AmerisourceBergen Corp. v. Dialysist West,*
22 *Inc.*, 465 F.3d 946, 951 (9th Cir.2006); *see also Chodos*, 292 F.3d at 1003 (“When
23 considering a motion for leave to amend, a district court must consider whether the
24 proposed amendment results from undue delay, is made in bad faith, will cause prejudice
25 to the opposing party, or is a dilatory tactic.”); *Foman v. Davis*, 371 U.S. 178, 182 (1962).
26 The factors are not of equal weight. “Prejudice to the opposing party is the most important

1 factor,” *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990); delay alone is
2 insufficient to deny leave to amend. *United States v. Webb*, 655 F.2d 977, 980 (9th Cir.
3 1981) (citing *Howey v. United States*, 481 F.2d 1187 (9th Cir. 1973)).

4 Here, Prime Healthcare has clearly put forth its best effort at articulating its claims.
5 Prime Healthcare’s 118-page Second Amended Complaint details all of the facts alleged
6 to be relevant to its claims. Prime Healthcare has had two opportunities to amend its
7 complaint in this action—once as of right pursuant to Federal of Procedure 15(a)(1)(B)
8 (*see* ECF Nos. 47) and once after the Court granted leave to amend (*see* ECF No. 73)—
9 resulting in a total of three complaints alleging RICO and LMRA claims against
10 Defendants.

11 Prime Healthcare also alleged much of the same conduct in its earlier *Prime*
12 *Healthcare I*. *See Prime Healthcare I*, No. 11-CV-2652-GPC-RBB (S.D. Cal.). In *Prime*
13 *Healthcare I*, Plaintiff filed an initial complaint and a first amended complaint after the
14 Court granted the Kaiser Defendants’ motion to dismiss with leave to amend. (*See id.*,
15 ECF No. 46.) This Court dismissed Prime Healthcare’s first amended complaint under
16 Federal Rule of Civil Procedure 12(b)(6), but granted leave to amend. *See Prime*
17 *Healthcare I*, 2013 WL 3873074 (S.D. Cal. July 25, 2013). After Prime Healthcare did not
18 file a second amended complaint, this Court granted Defendants’ motion to dismiss with
19 prejudice for lack of prosecution under Federal Rule of Civil Procedure 41(b). *See Prime*
20 *Healthcare I*, 2013 WL 6500069 (S.D. Cal. Dec. 11, 2013). The Court has determined that
21 the doctrine of res judicata bars allegations of pre-September 21, 2012 conduct. *See supra*
22 7-8.

23 Recently, Plaintiff moved to file a TAC which essentially adds three paragraphs to
24 the SAC which relate to comments attributed to an unidentified CHA representative on
25 June 1, 2015. (Proposed TAC ¶¶ 246a, 258a, 303a, ECF No. 81.) Plaintiff asserts that the
26 comments provide further support for its claims. The Court disagrees. The statements are
27

1 ambiguous and unattributed to an individual who has the authority or knowledge to speak
2 about the matters referenced. The Court finds that they do not cure the deficiencies
3 identified in this Order and do not provide the basis for leave to amend. It is clear to the
4 Court that permitting a TAC would be an exercise in futility.

5 Prime Healthcare has had ample opportunities to adequately plead its claims in the
6 instant action. The Court cannot conceive of any new facts that could possibly cure the
7 pleading. The Court finds that leave to amend would be futile in these circumstances and
8 GRANTS Defendants' motion to dismiss Plaintiff's SAC with prejudice.

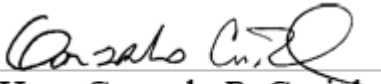
9 **CONCLUSION AND ORDER**

10 For the foregoing reasons, the Court hereby ORDERS:

- 11 1. Defendants' Motion to Dismiss the SAC (ECF No. 74) is **GRANTED**;
- 12 2. Plaintiff's Motion for Leave to File TAC (ECF No. 81) is **DENIED** and the
13 hearing on the motion scheduled for December 17, 2015 is **VACATED**;
- 14 3. The Court **DISMISSES WITH PREJUDICE** Prime Healthcare's entire
15 SAC. The Clerk of the Court shall close the case.

16 **IT IS SO ORDERED.**

17 Dated: November 23, 2015

18 
19 Hon. Gonzalo P. Curiel
United States District Judge