United States of America v. Diagnostic Physicians Group, P.C. et al Doc. 305

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	)	
***ex rel.*, Christian M. Heesch,**	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**CIVIL ACTION NO. 11-0364-KD-B**
	)	
DIAGNOSTIC PHYSICIANS GROUP, P.C.;	)	
IMC-DIAGNOSTIC AND MEDICAL, P.C.;	)	
IMC-NORTHSIDE CLINIC, P.C.;	)	
INFIRMARY MEDICAL CLINICS, P.C.; &	)	
INFIRMARY HEALTH SYSTEMS, INC.,	)	
	)	
Defendants.	)	

ORDER

This action is before the Court on the motion to dismiss the United States' complaint in intervention filed by Defendant Diagnostic Physicians Group, P.C. (DPG) and brief in support (docs. 57, 58), the United States' response (doc. 69), DPG's reply (doc. 78), the Report and Recommendation entered by U. S. Magistrate Judge Sonja F. Bivins (doc. 190), and the United States' objection (doc. 211).

After due and proper consideration of the issues raised and a de novo determination of those portions of the Recommendation to which objection is made, the United States' objections are overruled and the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) and dated April 15, 2014 (doc. 190) is **adopted** as the opinion of this Court.

Further, the United States requests thirty days to amend its complaint pursuant to Fed. R. Civ. P. 15(a)(2) to cure any defects and to add a conspiracy claim against all Defendants under the False Claims Act based upon facts learned in discovery (doc. 211, p. 3-4). The United States

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asserts that fairness dictates that it should be given at least one chance to correct any pleading deficiencies. The United States' request is **denied.** The United States has had almost three years to properly investigate and assert its claims. Moreover, discovery will close June 10, 2014, dispositive motions are due June 30, 2014, and the litigation is four months from a firm, specially set jury selection and trial in September 2014 (doc. 86, Rule 16(b) Scheduling Order).

Accordingly, DPG's motion to dismiss is granted in part and denied in part, as follows:

1) The motion is **granted** as to Count Three against Defendant Diagnostic Physicians Group, P.C.; and

2) The motion is **denied** as to all remaining claims against Defendant Diagnostic Physicians Group, P.C. as contained in Counts One, Two, Four and Five.

DONE and **ORDERED** this the 22nd day of May 2014.

s / Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE