1 2 3 UNITED STATES DISTRICT COURT 4 EASTERN DISTRICT OF CALIFORNIA 5 6 **CASE NO. 17-CV-00613-AWI-SKO** UNITED STATES and the STATE OF 7 CALIFORNIA, ex rel. THOMAS REILLY, GARRETT LEE, KEVIN SCHMIDT, AND 8 ORDER TERMINATING CERTAIN TERRY HILLIARD, FENDANTS AND ORDER TO SHOW 9 CAUSE REGARDING DISMISSAL OF Plaintiffs, CLAIMS AGAINST OTHER v. 10 **DEFENDANTS** ADVENTIST HEALTH, et al., 11 Defendants. 12 13 14 15 16 There are ten defendants named in the First Amended Complaint ("1AC") in this action: 17 Adventist Health, San Joaquin Community Hospital ("SJCH"), Premier Physician Alliance, Inc. 18 ("PPA"), Raymond Zurcher, Donald Cornforth, Kurt Hoekendorf, Paul Griffin, William Brent 19 Soper, Scott Reiner and Robert Beehler ("Defendants"). See Doc. No. 8, Part III.B. Griffin filed 20 an Answer to the 1AC on September 19, 2019, Doc. No. 34, and Adventist Health, SJCH, 21 Hoekendorf, Soper, Reiner and Beehler (together, the "Moving Defendants") brought a motion to 22 dismiss the 1AC on October 8, 2019. Doc. No 35. Three other Defendants—PPA, Zurcher and 23 Cornforth—have not responded to the 1AC in any fashion. 24 On May 18, 2020, the Court granted the Moving Defendants' motion to dismiss. See Doc. No. 48. The Court's May 18 Order dismissed all of the claims in the 1AC as to the Moving 25 26 Defendants with leave to amend two counts. See id. The Court granted Relators twenty-one days 27 to file an amended complaint and warned that "[i]f Relators fail to file a Second Amended 28 Complaint within 21 days from the date of electronic service of th[e] Order, leave to amend will

be withdrawn and Adventist Health, San Joaquin Community Hospital, [] Beehler, [] Hoekendorf, [] Reiner and [] Soper will be terminated as defendants in this action without prior notice to the parties." <u>Id.</u> More than twenty-one days has now passed, and despite the Court's warning, Relators have not amended their claims.

The Court takes Relators' failure to comply with the May 18 Order—and Relators' failure to heed the Court's warning regarding termination of the Moving Defendants—as Relators' decision to discontinue prosecution of this matter as to the Moving Defendants. Moreover, the Relators' failure to file an amended complaint prevents this case from proceeding as to the Moving Defendants because the Court has found that the operative complaint contains no viable claims against the Moving Defendants, and the time to file an amended complaint has passed. Therefore, it is appropriate to withdraw leave to amend the 1AC and terminate the Moving Defendants as defendants in this action.

Further, it appears that the rationale applied by the Court in dismissing Relators' claims as to the Moving Defendants applies with equal force to Relators' claims against Griffin and to the three Defendants—PPA, Zurcher and Cornforth—who have not responded to the 1AC.

Accordingly, the Court will order Relators to show cause why the claims against Griffin should not be dismissed. Further, the Court will order Relators to show cause why PPA, Zurcher and Cornforth should not be dismissed as Defendants under Rule 4(m) of the Federal Rules of Civil Procedure for lack of timely service and (assuming Relators make such a showing) why claims against PPA, Zurcher and Cornforth should not be dismissed on the grounds in the May 18 Order.

## **ORDER**

Accordingly, IT IS HEREBY ORDERED that:

- 1. Leave to amend the First Amended Complaint is WITHDRAWN;
- 2. Adventist Health, San Joaquin Community Hospital, Kurt Hoekendorf, William Brent Soper, Scott Reiner and Robert Beehler are TERMINATED as defendants in this case;
- 3. Relators shall SHOW CAUSE in writing within ten days of electronic service of this Order as to why claims against Paul Griffin should not be dismissed based on the

analysis set forth in the Court's May 18, 2020 Order (Doc. No. 48);

- 4. Griffin shall have seven days from electronic service of such filing to respond;
- 5. Failure by Relators to timely show cause in writing why the claims against Griffin should not be dismissed will result in dismissal with prejudice of claims against Griffin and termination of Griffin as a defendant without further notice to the parties;
- 6. Relators shall SHOW CAUSE in writing within ten days of electronic service of this Order as to why claims against Premier Physician Alliance, Inc. ("PPA"), Raymond Zurcher and Donald Cornforth should not be dismissed for lack of timely service under Rule 4(m) of the Federal Rules of Civil Procedure and, to the extent such a showing is made, why dismissal of the claims against PPA, Zurcher and Cornforth is not warranted for the reasons set forth in the Court's May 18, 2020 Order;
- 7. PPA, Zurcher and Cornforth shall have seven days from electronic service of such filing to respond;
- 8. Failure by Relators to timely show cause in writing why the claims against PPA,

  Zurcher and/or Cornforth should not be dismissed will result in dismissal with

  prejudice of claims against PPA, Zurcher and/or Cornforth and termination of PPA,

  Zurcher and/or Cornforth as defendants without further notice to the parties;
- 9. In the event Relators fail to timely show cause why any of the remaining claims in this action should not be dismissed, all remaining claims will be dismissed with prejudice and this case will be closed without further notice to the parties.

IT IS SO ORDERED.

Dated: <u>June 30, 2020</u>

SENIOR DISTRICT JUDGE