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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, et al.,
ex rel. JOHN DOE, RELATOR,

Plaintiffs,

v.

BIOTRONIK, INC., et al.,

Defendants.

No. 2:09-cv-3617-KJM-EFB (CLOSED)

BIOTRONIK, INC.,

Plaintiff,

v.

BRIAN SANT,

Defendant.

No. 2:16-cv-01632-MCE-GGH

RELATED CASE ORDER

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1 Examination of the above-captioned actions reveals they are not related within the
2 meaning of Local Rule 123(a). Local Rule 123(a) provides that:

3 An action is related to another . . . when

- 4 (1) both actions involve the same parties and are based on the same
5 or a similar claim;
- 6 (2) both actions involve the same property, transaction, or event;
- 7 (3) both actions involve similar questions of fact and the same
8 question of law and their assignment to the same Judge or
9 Magistrate Judge is likely to effect a substantial savings of
10 judicial effort, either because the same result should follow in
11 both actions or otherwise; or
- 12 (4) for any other reasons, it would entail substantial duplication of
13 labor if the actions were heard by different Judges or Magistrate
14 Judges.

15 On December 31, 2009, Biotronik, Inc.'s former employee, Brian Sant, filed a *qui*
16 *tam* action, alleging, among other things, that Biotronik violated the federal False Claims Act, 31
17 U.S.C. §3729 *et seq.*, and certain state statutes by providing monetary and other incentives for
18 physicians to use Biotronik devices. *U.S. ex rel. John Doe v. Biotronik, Inc.*, Case No. 2:09-cv-
19 3617-KJM-EFB (E.D. Cal. filed Dec. 31, 2009) ("*Biotronik I*"). On May 28, 2014, Sant, the
20 United States, and Nevada filed a stipulation for dismissal, which provided that the dismissal was
21 "in accordance with the terms and conditions of the respective Settlement Agreements," and that
22 the dismissal was with prejudice as to Sant. *Biotronik I*, ECF No. 64. On June 5, 2014, the
23 undersigned approved the parties' stipulation and dismissed the action with prejudice as to Sant.
24 *Id.*, ECF No. 69. On June 6, 2014, judgment was entered and the case was closed. *Id.*, ECF No.
25 70. The undersigned subsequently resolved requests to seal and a motion for attorneys' fees. *See*
26 *id.*, ECF Nos. 76, 77, 160, 171, 172.

27 Earlier this year, Biotronik was served with a complaint that was filed by Sant in
28 California state court in 2011, Case No. 34-2011-00098562 (Sacramento Cty. Super. Ct. filed
Mar. 2, 2011). *See Biotronik v. Sant*, Case No. 2:16-cv-01632-MCE-GGH (E.D. Cal. filed July
15, 2016) ("*Biotronik II*"), ECF No. 1. The state court complaint makes similar allegations as
does the complaint in *Biotronik I*, that Biotronik provided kickbacks to physicians to use its

1 devices, but seeks relief under California's Insurance Fraud Prevention Act. *Id.* Ex. 2 (state court
2 complaint). On July 15, 2016, Biotronik filed an action in federal court, *Biotronik II*, alleging
3 Sant released the claims he is pursuing in state court in the *Biotronik I* settlement agreement and
4 breached the settlement agreement by pursuing those claims. *Id.*, ECF No. 1.

5 Biotronik now seeks to relate *Biotronik II* to *Biotronik I*. *Id.*, ECF No. 4.
6 Biotronik argues it would likely effect a substantial savings of judicial effort to relate the two
7 cases, because the undersigned dismissed *Biotronik I* in accordance with the terms of the parties'
8 settlement agreement. *Id.* The court disagrees. Although both actions involve Biotronik and
9 Sant, they are based on different claims, arise from different events, and involve different
10 questions of fact and law. *Biotronik I* involved allegations that Biotronik provided kickbacks to
11 physicians in violation of the False Claims Act and certain state statutes, whereas *Biotronik II*
12 involves allegations that Sant breached a settlement agreement with Biotronik. The fact that the
13 undersigned was presiding over the action in *Biotronik I* at the time the settlement agreement was
14 signed does not alone justify relation of the two cases. The court finds it is not likely
15 reassignment of *Biotronik II* to the undersigned would effect a substantial savings of judicial
16 effort or prevent substantial duplication of labor. Accordingly, the case of *Biotronik II*, Case
17 No. 2:16-cv-01632-MCE-GGH, is not related to the case of *Biotronik I*, Case No. 2:09-cv-3617-
18 KJM-EFB, within the meaning of Local Rule 123(a), and the court does not reassign it.

19 IT IS SO ORDERED.

20 DATED: August 1, 2016.

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23 UNITED STATES DISTRICT JUDGE
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