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15 DAVE WELLER

16 UNITED STATES DISTRICT COURT  
17 EASTERN DISTRICT OF CALIFORNIA

18 DAVE WELLER,  
19  
20 Plaintiffs,  
21  
22 v.

Case No.: 2:17-cv-00623-JAM-EFB

**STIPULATION TO DISMISS  
MISNAMED DEFENDANTS AND  
ORDER  
(Fed. Rules Civ. Proc., Rule 41)**

23 HEALTHNOW NEW YORK, INC.;  
24 HEALTHNOW, INC.; BROKERAGE  
25 CONCEPTS, INC.; HEALTHNOW  
26 SYSTEMS, INC.; HEALTHNOW  
27 ADMINISTRATIVE SERVICES,  
28 INDIVIDUALLY and dba BROKERAGE  
CONCEPTS, INC.; and DOES 1 through  
100, inclusive,  
Defendants.

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1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS:**

2 Plaintiff DAVE WELLER by and through his counsel of record Lawrance A. Bohm, and  
3 Robert L. Boucher, and Defendants BROKERAGE CONCEPTS, INC., HEALTHNOW NEW  
4 YORK INC., HEALTHNOW ADMINISTRATIVE SERVICES (a DBA of Brokerage  
5 Concepts, Inc.), and HEALTHNOW SYSTEMS, INC. (together, “Defendants”), by and through  
6 their counsel of record, Greenberg Traurig, LLP, stipulate to the dismissal under Federal Rules  
7 of Civil Procedure, Rule 41(a)(1)(A)(ii) without prejudice of the following named Defendants:  
8 HealthNow New York Inc., HealthNow Administrative Services (a DBA of Brokerage  
9 Concepts, Inc.), and HealthNow Systems, Inc. (See, *Wilson v. Crouse-Hinds Co.*, 556 F.2d 870,  
10 873 (8th Cir. 1977) (allowing dismissal under Rule 41(a) of only part of an action per, “a  
11 stipulation signed by all the parties or an order of the court”).) This stipulation is based on the  
12 following grounds:

13 WHEREAS, Defendant Brokerage Concepts, Inc. timely removed this action to  
14 federal court on March 24, 2017. As related entities, Defendants HealthNow New York  
15 Inc., HealthNow Administrative Services (a DBA of Brokerage Concepts, Inc.), and  
16 HealthNow Systems, Inc. join in and consent to the removal.

17 WHEREAS, on May 22, 2017, the parties met and confer regarding service of  
18 process and Plaintiff represented he properly served all parties with process as to the First  
19 Amended Complaint. Defendants hereby agree to accept service of the First Amended  
20 Complaint as of the date of the filing of this stipulation.

21 WHEREAS, the Defendants represent to Plaintiff and the Court that:

22 (1) HEALTHNOW, INC. is not affiliated in any way with Defendants. Defendants  
23 believe that HEALTHNOW, INC. is a dissolved California corporation and that, in  
24 any event, was never associated with the HealthNow New York Inc. corporate  
25 structure.

26 (2) HealthNow New York Inc., HealthNow Administrative Services (a DBA of  
27 Brokerage Concepts, Inc.), and HealthNow Systems, Inc. were never Plaintiff’s  
28 employer. Instead, Defendant Brokerage Concepts, Inc. employed Mr. Weller. Even

1           though the name “HealthNow New York Inc.” may have been on some of Plaintiff’s  
2           employment forms, HealthNow New York Inc. was included on those forms simply  
3           because Defendant Brokerage Concepts, Inc. is a subsidiary of HealthNow Holdings  
4           Inc., which in turn is a subsidiary of HealthNow New York Inc.

5           WHEREAS, without waiving any right to post-trial motions or appeal, Defendants agree  
6           to be liable on any verdict or judgment which is entered either against the dismissed Defendants  
7           HealthNow New York Inc., HealthNow Administrative Services (a DBA of Brokerage  
8           Concepts, Inc.), and HealthNow Systems, Inc. or is based on evidence that the dismissed  
9           Defendants HealthNow New York Inc., HealthNow Administrative Services (a DBA of  
10          Brokerage Concepts, Inc.), and HealthNow Systems, Inc. were actually the liable parties.

11          WHEREAS, without waiving any right to post-trial motions or appeal, Defendant  
12          Brokerage Concepts, Inc. agrees to waive its right to defend this suit on the ground that the  
13          dismissed Defendants HealthNow New York Inc., HealthNow Administrative Services (a DBA  
14          of Brokerage Concepts, Inc.), and HealthNow Systems, Inc. were liable in any way.

15          WHEREAS, if it is later proven that the dismissed Defendants HealthNow New York  
16          Inc., HealthNow Administrative Services (a DBA of Brokerage Concepts, Inc.), and HealthNow  
17          Systems, Inc. were properly named, Defendant Brokerage Concepts, Inc. stipulates to a later  
18          amendment to add the dismissed Defendants HealthNow New York Inc., HealthNow  
19          Administrative Services (a DBA of Brokerage Concepts, Inc.), and HealthNow Systems, Inc.  
20          (“Dismissed Defendants”) as parties to this lawsuit, notwithstanding the otherwise-applicable  
21          statutes of limitations, provided that any otherwise-applicable limitations had not already  
22          expired on the date by when Plaintiff filed his Complaint naming the Dismissed Defendants in  
23          this lawsuit.

24          WHEREAS, based on Defendants’ representations, Plaintiff agrees that suit against  
25          Defendants HealthNow New York Inc., HealthNow Administrative Services (a DBA of  
26          Brokerage Concepts, Inc.), and HealthNow Systems, Inc. would be futile, and that these  
27          dismissed Defendants are not proper Defendants in this action.

28          WHEREAS, based on Defendants’ representations, Plaintiff also agrees that suit against

1 Defendant HealthNow, Inc., which Defendants represent is not affiliated with the HealthNow  
2 New York Inc. corporate structure, would be futile.

3 WHEREAS, this stipulation only dismisses claims against the dismissed Defendants;  
4 suit against Defendant Brokerage Concepts, Inc. remains in effect.

5 WHEREAS, the parties agree to bear their own costs as to suit against the dismissed  
6 Defendants HealthNow New York Inc., HealthNow Administrative Services (a DBA of  
7 Brokerage Concepts, Inc.), and HealthNow Systems, Inc., and Plaintiff agrees to bear his own  
8 costs as to suit against the dismissed Defendant HealthNow, Inc.

9 IT IS THEREFORE STIPULATED AND AGREED BY the Parties that:

10 (1) The First Amended Complaint, attached hereto as Exhibit A, be deemed filed  
11 and served on Defendants Brokerage Concepts, Inc., HealthNow New York Inc., HealthNow  
12 Administrative Services (a DBA of Brokerage Concepts, Inc.), and HealthNow Systems, Inc. on  
13 the date the Court enters an order on this stipulation.

14 (2) Defendants HealthNow New York Inc., HealthNow Administrative Services (a  
15 DBA of Brokerage Concepts, Inc.), and HealthNow Systems, Inc. be dismissed from this  
16 lawsuit without prejudice, and any claims by Plaintiff not already barred against these  
17 defendants are tolled during the pendency of this lawsuit.

18 (3) Plaintiff hereby dismisses Defendant HealthNow, Inc. from this lawsuit without  
19 prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

20 (4) Brokerage Concepts, Inc. shall file a response to the First Amended Complaint  
21 within fourteen (14) days from the date the Court enters an order on this stipulation.

22  
23 Dated: June 2, 2017

BOHM LAW GROUP, INC.

24  
25 By: /s/ Robert L. Boucher  
LAWRANCE A. BOHM, ESQ.  
ROBERT L. BOUCHER, ESQ.

26  
27 Attorneys for Plaintiff,  
DAVE WELLER

1 ///

2 Dated: June 2, 2017

GREENBERG TRAURIG LLP.

3 By: /s/ Kurt A. Kappes

4 KURT A. KAPPES, ESQ.  
5 MICHELLE L. DUCHARME, ESQ.

6 Attorneys for Defendants,  
7 BROKERAGE CONCEPTS, INC.,  
8 HEALTHNOW NEW YORK  
9 INC., HEALTHNOW  
10 ADMINISTRATIVE SERVICES  
(a DBA of Brokerage Concepts,  
11 Inc.), and HEALTHNOW  
12 SYSTEMS, INC.

13 **ORDER**

14 In view of the parties' Stipulation, the Court orders as follows:

15 (1) The First Amended Complaint, attached hereto as Exhibit A, is deemed filed and  
16 served on Defendants Brokerage Concepts, Inc., HealthNow New York Inc., HealthNow  
17 Administrative Services (a DBA of Brokerage Concepts, Inc.), and HealthNow Systems, Inc. as  
18 of the date of this Order.

19 (2) Defendants HealthNow New York Inc., HealthNow Administrative Services (a  
20 DBA of Brokerage Concepts, Inc.), and HealthNow Systems, Inc. are hereby dismissed from  
21 this lawsuit without prejudice and any claims by Plaintiff not already barred against these  
22 defendants are tolled during the pendency of this lawsuit.

23 (3) Defendant HealthNow, Inc. is hereby dismissed from this lawsuit without  
24 prejudice.

25 (4) Brokerage Concepts, Inc. shall file a response to the First Amended Complaint  
26 within fourteen (14) days from the date of this Order.

27 **IT IS SO ORDERED.**

28 Dated: 6/5/2017

/s/ John A. Mendez

John Mendez  
United States District Court Judge  
Eastern District of California