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UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

JAJCO, INC., dba ANCHOR DRUGS
PHARMACY,

No. C 12-05703 WHO (LB)

Plaintiff,

v.

**ORDER REGARDING THE PARTIES'
JOINT DISCOVERY DISPUTE
LETTER BRIEF DATED JULY 22,
2013**

LEADER DRUG STORES, INC., et al.,

[Re: ECF No. 58]

Defendants.

This case involves Anchor Drugs Pharmacy's ("Anchor") claim that Catamaran/InformedRX ("Catamaran"), a third-party payor that processes claims submitted by Anchor to Health Plan of San Mateo ("HPSM"), wrongly took roughly \$514,000 in 2010 and 2011 from Anchor's Central Pay accounts with Leader Drug Stores, Inc. ("Leader"), a pharmacy services administrator. *See* Order Denying Motion to Dismiss and Strike Third Amended Complaint, ECF No. 50 at 3; 7/12/2013 Joint CMC Statement, ECF No. 57 at 3. Anchor also claims that Catamaran did not pay it the contracted rate set forth in the HPSM contract for processing prescriptions and thus underpaid it for filled prescriptions. *See* Order Denying Motion to Dismiss and Strike Third Amended Complaint, ECF No. 50 at 3; 7/12/2013 Joint CMC Statement, ECF No. 57 at 3. Catamaran counters that it was recapturing payments made in error (apparently in the amount of \$700,000), but Anchor alleges that HPSM's audit shows that out of the 27,000 analyzed claims, only 10% were paid at the correct rate, 40% were underpaid, and the alleged overpayments were not the \$700,000 that Catamaran claims.

C 12-05703 WHO (LB)
NOTICE OF REFERRAL AND ORDER

1 7/12/2013 Joint CMC Statement, ECF No. 57 at 3, 6.

2 Catamaran's counsel is unavailable from July 31, 2013 through August 9, 2013. Given the
3 tension with depositions scheduled in August and the mandatory settlement conference on
4 September 27, 2013, the undersigned issues this order directing the production of certain
5 information by August 15, 2013 and establishing parameters for future discovery disputes.

6 **STATEMENT**

7 The latest discovery dispute is described in a joint 24-page single-spaced letter. *See* 7/22/13
8 Joint Letter Brief, ECF No. 58. Anchor complains generally that Catamaran has delayed producing
9 discovery and refers to the inadequacy of Catamaran's responses. For example, it says that it (1)
10 made five requests for a complete copy of the IRX/HPSM contract (one with certain missing
11 exhibits), (2) requested certain contracts between Leader and Catamaran, and (3) asked for
12 documents regarding Catamaran's new entity structure (it went from a corporation to a limited
13 liability corporation). *Id.* at 4. Catamaran responds as follows: (1) it produced the IRX/HPSM
14 contract over a year ago and it does not have any unidentified "missing" exhibits to it; (2) it
15 produced the contract between Leader and Catamaran over a year ago, and any "missing" contracts
16 either were produced by Leader or were confirmed as not existing by Catamaran; and (3) it shared
17 the relevant corporate structure information. *Id.* at 5-6. Thus, Catamaran says that it has produced
18 what Anchor wants, it does not know what else Anchor thinks is out there, and anything else does
19 not exist.

20 The letter then details the parties' disagreements about the effectiveness of their meet-and-confer
21 process. *Id.* at 6-7. Anchor thinks that Catamaran is stalling, and this matters because depositions
22 are scheduled in August and a mandatory settlement conference is in September. *Id.* at 7.

23 Pages 8 through 24 are a RFP-by-RFP disagreement about (1) whether Catamaran has already
24 produced documents (which Catamaran often says that it has), or (2) if not, whether (as Catamaran
25 suggests) Anchor's requests are too broad, and the parties ought to meet and confer more to narrow
26 the requests so that they are not objectionable. *Id.* at 8-24. The categories at issue are as follows:
27 (1) the relevant contracts; (2) Catamaran's changed corporate structure; (3) claims, payments, and
28 recoupment data; (4) minutes and agendas of the Board of Directors regarding claims, payments, and

1 recoupments; (5) Catamaran’s current financial condition; (6) documents regarding the ACE
2 investigation with respect to the claims, payments, and recoupments at issue; and (7) administrative
3 fees recovered by Catamaran. *Id.*

4 **ANALYSIS**

5 The parties’ letter brief is repetitive and contains a lot of argument about whether or not
6 Catamaran is producing documents. Anchor says Catamaran is not, and Catamaran says that it is.
7 *See, e.g., id.* at 1-6. The parties also disagree about the adequacy of their meet-and-confer process.
8 *See id.*

9 It is hard to tell what is going on. On the one hand, Catamaran says that it has produced many
10 documents, and thus there is no problem for some categories. On the other hand, Anchor argues that
11 Catamaran has not produced relevant documents. Also, Catamaran’s responses often are technical
12 objections that are not very practical. For example, Catamaran states repeatedly that Anchor’s
13 responses are too broad and not narrowed to the parties’ claims or defenses, and it often suggests a
14 further meet and confer. *See id.* at 16-23. But the undersigned’s standing order also requires a
15 proposed compromise, *see* Order, ECF No. 40-1 at 2-3, and Catamaran offers none. Catamaran’s
16 approach does not seem geared to resolving disputes but instead makes Anchor think that there are
17 disputes even when maybe there are not any (such as when documents have been produced).

18 Given Catamaran’s counsel’s unavailability, the undersigned orders that by August 15, 2013, the
19 following should be produced for the period in dispute in the lawsuit:

- 20 1. The complete relevant contracts.
- 21 2. Documents or information regarding Catamaran’s corporate structure insofar as it is relevant
22 to this lawsuit (including responsibility for liabilities) (as opposed to what may not be consequential
23 such as Catamaran’s doing business in other states “with an untold number of entities,” *see id.* at 10)
24 (RFP Nos. 34-39).
- 25 3. Claims, payment, and recoupment data and documents relevant to Anchor’s claims and
26 Catamaran’s defenses (RFP Nos. 50-51, 56).
- 27 4. Board of Directors’ minutes and agendas regarding the claims, payments, and recoupments at
28 issue in the lawsuit (RFP Nos. 32-33).

1 5. Financial information showing Catamaran's current financial condition and net worth (and
2 this may be produced pursuant to the protective order) (RFP Nos. 40-45).

3 6. Documents regarding the Ace Investigation with respect to the claims, payments, and
4 recoupments at issue in the lawsuit (RFP No. 47).

5 7. Documents regarding administrative fees recovered by Catamaran that are relevant to the
6 lawsuit (RFP Nos. 52-54).

7 This is meant to be a practical remedy that should not be burdensome if Catamaran really has
8 produced documents. Moreover, it is necessary for the depositions scheduled in August and the
9 September settlement conference, and it is intended to accomplish the discovery plan that should
10 have been formulated by June 26, 2013. *See* 6/12/13 Order, ECF No. 53 at 2 (directing a discovery
11 plan within two weeks that included a schedule for depositions and document production to make
12 the depositions and settlement conference productive).

13 In the future, discovery disputes should be limited to the specific requests and should avoid
14 argument about what the other party has or has not done. Each dispute should be in a separate
15 section starting with the specific request and then followed by the parties' positions (moving party
16 first). Each party should have a short statement of its position followed by (if necessary) the legal
17 authorities that support the position and then the party's proposed compromise.

18 **CONCLUSION**

19 The undersigned orders the productions set forth above by August 15, 2013. If this time line is
20 unrealistic, or if there are burdens, or if there is additional information that the parties want, the
21 parties must meet and confer and submit a joint letter brief that does not contain extraneous
22 argument about delay and obstruction and instead focuses on the fact discovery at issue.

23 This disposes of ECF No. 58.

24 **IT IS SO ORDERED.**

25 Dated: August 6, 2013

26 

27 LAUREL BEELER
28 United States Magistrate Judge