

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PACIFIC RECOVERY SOLUTIONS, et al.,
Plaintiffs,
v.
CIGNA BEHAVIORAL HEALTH, INC., et
al.,
Defendants.

Case No. [5:20-cv-02251-EJD](#)

**ORDER DENYING MOTION TO
CONSOLIDATE**

Re: Dkt. No. 63

This case is one of three related cases pending before the Court in which a Cigna entity is alleged to have reneged on its agreement to reimburse mental health provider claims at the usual, customary, and reasonable (“UCR”) rates. Cigna Behavioral Health, Inc. (“Cigna”) moves to consolidate this case, hereinafter referred to as “*Pacific Recovery*,” with *Summit Estate, Inc. v. Cigna Health and Life Insurance Co.*, No. 20cv4697 EJD (“*Summit*”), pursuant to Federal Rule of Civil Procedure 42(a). Dkt. No. 63. Plaintiffs in the *Pacific Recovery* case, Pacific Recovery Solutions, Miriam Hamideh, Bridging the Gaps, Inc., and Summit Estate Inc. (“Plaintiffs”) filed an opposition. Dkt. No. 65. Cigna filed a reply. Dkt. No. 68. The motion is scheduled for hearing on February 11, 2021. The Court finds it appropriate to take the motion under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b) and General Order 72. For the reasons stated below, the Court will deny Cigna’s motion.

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I. BACKGROUND¹**A. *Summit*, Case No. 20cv4697**

Summit Estate, Inc. (“Summit”) initiated the *Summit* action against Cigna Health and Life Insurance Company (“Cigna Health and Life”) in July of 2020. This lawsuit encompasses only the claims and patients that were the subject of a prior lawsuit entitled *Summit Estate v. Cigna*, No. 17cv3871 LHK, that the parties agreed to dismiss, subject to a tolling agreement, so that they could engage in efforts to reprocess medical insurance coverage claims for substance abuse treatment for ten patients. Compl. ¶¶ 4-5. The Complaint alleges that within the past two years, Summit took steps to verify available benefits for substance abuse for the patients and was advised through telephone communications that Cigna Health and Life would pay for treatment at the UCR rates. *Id.* ¶ 6. In reasonable reliance on Cigna Health and Life’s representations and agreements, Summit provided services to the ten patients. *Id.* ¶ 7. Cigna Health and Life breached their agreements by refusing to pay Summit at the UCR rates and paying instead a different and significantly lower amount for treatment. *Id.* ¶ 8. Summit further alleges that at the time benefits were verified, Cigna Health and Life was using and planning on using a third-party repricing company to make unreasonably low claim payments and/or to negotiate lower claim payments after the fact. *Id.* Based on the foregoing, Summit asserts claims for “Breach of Contract-Pre-Admission Oral Agreement”; intentional misrepresentation; negligent misrepresentation; fraudulent concealment; negligent failure to disclose; promissory estoppel; and breach of implied contract.

B. *Pacific Recovery*, Case No. 20cv2251

Plaintiffs in *Pacific Recovery* are a group of four out-of-network behavioral health care providers that provide Intensive Outpatient Program treatment (“IOP”) in the United States. Compl. at 4, ¶¶ 67-70. Pacific Recovery Solutions d/b/a Westwind Recovery (“Westwind”), is a California Limited Liability Company and a duly licensed behavioral health treatment provider

¹ The Background is a brief summary of the allegations in the *Summit* and *Pacific Recovery* operative complaints.

1 with a primary place of business in Los Angeles, CA. *Id.* ¶ 68. Miriam Hamideh PhD Clinical
2 Psychologist Inc. d/b/a PCI Westlake Centers (“PCI Westlake”), is a California corporation and a
3 duly licensed behavioral health treatment provider with a primary place of business in Westlake
4 Village, CA. *Id.* ¶ 69. Bridging the Gaps, Inc. (“BTG”), is Virginia corporation and a duly licensed
5 behavioral health treatment provider with a primary place of business in Winchester, VA. *Id.* ¶ 70.
6 Summit Estate Inc. d/b/a Summit Estate Outpatient, is a California corporation and duly licensed
7 behavioral health treatment provider with a primary place of business in Saratoga, CA 95070. *Id.* ¶
8 70. They seek to represent a class of similarly situated providers against Cigna, a Minnesota
9 corporation with its principal place of business in Eden Prairie, MN, and Viant, Inc. (“Viant”), a
10 third-party “repricer” incorporated in Nevada with its principle place of business in Naperville, IL.
11 *Id.* ¶¶ 1, 18, 71-72.

12 Prior to providing treatment to patients insured by Cigna, Plaintiffs confirmed with Cigna
13 during an initial Verification of Benefits (“VOB”) call that the patient had active coverage and
14 benefits for out of network IOP treatment services. *Id.* ¶¶ 3, 22, 30. For all the insurance claims at
15 issue, Cigna represented that the claims would be paid at a percentage of the UCR rates, which
16 Cigna would calculate by using either Cigna’s “Maximum Reimbursable Charge” (“MRC”) I or II
17 methodologies. *Id.* ¶¶ 9-12. Alternatively, Cigna would arrive at the UCR rates “based on rates
18 charged by similar providers in a similar geographic area.” *Id.* ¶ 12. During the VOB call, none of
19 the Plaintiffs were told by Cigna that their claims could be subject to third-party pricing by Viant.
20 *Id.* ¶ 36. Rather, Plaintiffs specifically asked and were told that a patient’s claims were not subject
21 to third party repricing. *Id.* ¶¶ 233-34.

22 In reliance upon Cigna’s representations, Plaintiffs agreed to treat Cigna’s insured and
23 timely submitted bills on industry standard forms and in keeping with industry practices. *Id.* ¶¶ 12,
24 140, 142. Pursuant to contract, patients were responsible for paying Plaintiffs the difference
25 between the amount Plaintiffs billed and the amount Cigna reimbursed. *Id.* ¶¶ 157, 161, 243.

26 Contrary to Cigna’s representations, Cigna did not pay at the UCR rates. *Id.* ¶ 18. Instead,
27 Cigna engaged Viant to negotiate reduced reimbursements with IOP treatment providers. *Id.*

1 Cigna sent claims to Viant via an Electronic Data Interchange (“EDI”), which included a “re-priced
2 rate” that represented the maximum that Viant was authorized to negotiate with providers. *Id.* ¶
3 112. After Viant received the EDI, it sent providers a proposed payment for claims at reduced
4 reimbursement rates. *Id.* ¶ 114. These reduced reimbursement rates are not derived from a
5 calculation of the UCR rates, notwithstanding Viant’s representations to the contrary. *Id.* ¶¶ 18,
6 46, 116. Nor are they set based on the insured’s plan terms or language. *Id.* ¶¶ 43-44. Rather,
7 Plaintiffs allege on information and belief that the reduced reimbursement rates represent the
8 lowest payment amount that a Viant representative convinced a provider to accept and are
9 “arbitrary, capricious and unreasonably low.” *Id.* ¶¶ 97, 117. At no point have Cigna or Viant
10 disclosed their pricing methodologies. *Id.* ¶¶ 175, 246. Viant only tells Plaintiffs that pricing is
11 determined by a “proprietary database.” *Id.* ¶ 254-55.

12 At the time Viant made its offers to Plaintiffs, it also sent a “patient advocacy letter”
13 (“PAD” letter) to the patient, claiming to represent the patient in a negotiation to reduce the billed
14 amount. *Id.* ¶ 118. Viant, however, does not have patient authorization to negotiate billed charges
15 on behalf of patients. *Id.* ¶ 235.

16 Cigna then paid the claims at issue at the reduced Viant rate, which often resulted in
17 patients left to pay for more than ninety percent of their care. *Id.* ¶ 19. Cigna and Viant allegedly
18 “collude[d] to illegally withhold these out-of-network benefits” to avoid paying tens, and
19 sometimes hundreds, of thousands of dollars per patient and to drive out-of-network providers out
20 of business. *Id.* ¶¶ 20, 41. The amounts that should have been paid to health care providers were
21 allegedly unjustly retained and used to pay a “kick-back” to Viant. *Id.* ¶ 20.

22 Every claim at issue in *Pacific Recovery* is for IOP behavioral health treatment for which
23 Cigna failed to pay at the UCR rates. *Id.* ¶¶ 21, 164. Coverage for the underlying medical
24 treatment is not in dispute; only the amount to be paid for the covered treatment is in dispute. *Id.* ¶
25 32. Plaintiffs do not have contractual relationships with Cigna or Viant. *Id.* ¶¶ 87, 94. Plaintiffs
26 did not agree to the reduced rates arrived at by Viant. *Id.* ¶¶ 19, 152-53, 241. When Plaintiffs or
27 patients contacted Cigna to dispute or challenge Viant’s reimbursement rates, Cigna refused to

1 handle or process the claim. *Id.* ¶ 120. Plaintiffs ultimately had no choice but to “balance bill”
 2 their patients for the amounts that they were owed as a result of Cigna’s underpayment. *Id.* ¶ 161.
 3 If Plaintiffs did not “balance bill,” Cigna would assert that Plaintiffs waived patient responsibility
 4 and therefore, Cigna had no further obligation to pay any additional amounts on claims. *Id.* ¶ 247-
 5 48, 259. For all the claims at issue in *Pacific Recovery*, Plaintiffs’ patients were unable to pay
 6 Cigna’s shortfall. *Id.* ¶ 181.

7 Westwind has treated more than 10 patients for whom claims for payment of IOP
 8 services were repriced by Viant. *Id.* ¶ 194. Viant’s repricing resulted in partial payments that, in
 9 sum, averaged only 11% of billed charges. *Id.* ¶ 197. Westwind has not been paid the remaining
 10 89% of the billed amounts owed. *Id.* Westwind estimates that it has been underpaid by at least
 11 \$177,317.45. *Id.* ¶ 198.

12 PCI Westlake has treated more than 9 Cigna patients for whom claims for payment of IOP
 13 services were repriced by Viant. *Id.* ¶ 201. Viant’s pricing resulted in partial payments that, in
 14 sum, averaged only 14% of billed charges. *Id.* ¶ 204. PCI Westlake has not been paid the
 15 remaining 86% of the billed amounts owed. *Id.* PCI Westlake estimates that it has been underpaid
 16 by at least \$238,108.22. *Id.* ¶ 205.

17 BTG has treated more than 21 patients for whom claims for payment of IOP services were
 18 repriced by Viant. *Id.* ¶ 208. Viant’s pricing resulted in partial payments that, in sum, averaged
 19 only 14% of billed charges. *Id.* ¶ 211. BTG has not been paid the remaining 86% of the billed
 20 amounts owed. *Id.* BTG estimates that it has been underpaid by at least \$736,998.47. *Id.* ¶ 212.

21 Summit Estate Inc. d/b/a Summit Estate Outpatient has treated more than 10 Cigna patients
 22 for whom claims for payment of IOP services were repriced by Viant. *Id.* ¶ 215. Viant’s pricing
 23 resulted in partial payments that, in sum, averaged only 15% of billed charges. *Id.* ¶ 218. Summit
 24 has not been paid the remaining 85% of the billed amounts owed. *Id.* Summit Estate Inc. d/b/a
 25 Summit Estate Outpatient estimates that it has been underpaid by at least \$325,000.00. *Id.* ¶ 219.²

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 28 ² The Complaint alleges that Summit Estate Inc. d/b/a Summit Estate Outpatient has been
 “overpaid” by at least \$325,000.00. *Id.* ¶ 219. The Court assumes that “overpaid” is a
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1 Based on the foregoing, Plaintiffs assert the following claims: (1) unfair and unlawful
 2 business acts and practices in violation of California Business & Professions Code § 17200 against
 3 Cigna (*id.* ¶¶ 261-69) and Viant (*id.* ¶¶ 270-78); (2) intentional misrepresentation and fraudulent
 4 inducement against Cigna and Viant (*id.* ¶¶ 279-94); (3) negligent misrepresentation against Cigna
 5 and Viant (*id.* ¶¶ 295-301); (4) civil conspiracy against Cigna and Viant (*id.* ¶¶ 302-14); (5) breach
 6 of oral and/or implied contract against Cigna (*id.* ¶¶ 315-35); (6) promissory estoppel against
 7 Cigna and Viant (*id.* ¶¶ 336- 49); (7) violations of the Racketeer Influenced and Corrupt
 8 Organizations Act (“RICO”) against Cigna and Viant (*id.* ¶¶ 350-95); and (8) violations of section
 9 1 of the Sherman Act against Cigna and Viant (*id.* ¶¶396-415).

10 II. STANDARDS

11 “If actions before the court involve a common question of law or fact, the court may . . .
 12 consolidate the actions.” Fed. R. Civ. P. 42(a)(2). District courts have broad discretion under this
 13 rule to consolidate cases pending in the same district. *Investors Research Co. v. U.S. Dist. Court*
 14 *for Cent. Dist. of Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). In deciding whether consolidation is
 15 appropriate under Rule 42(a), the court must “weigh[] the saving of time and effort consolidation
 16 would produce against any inconvenience, delay, or expense that it would cause.” *Huene v. United*
 17 *States*, 743 F.2d 703, 704 (9th Cir. 1984). The party seeking consolidation bears the burden to
 18 show that consolidation is desirable. *See DMF, Inc. v. AMP Plus, Inc.*, 2019 WL 9077477, at *6
 19 (C.D. Cal. Dec. 13, 2019).

20 III. DISCUSSION

21 The two suits share a common issue, *i.e.*, whether Cigna failed to abide by its agreement to
 22 pay at the UCR rates. The existence of common issues, however, does not compel consolidation.
 23 *Dodaro v. Standard Pac. Corp.*, 2009 WL 10673229, at *3 (C.D. Cal. Nov. 16, 2009). Beyond this
 24 common issue, the two cases involve significant differences in fact and law such that
 25 consolidation of the cases would be unduly prejudicial to plaintiff in *Summit*. First, although both
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 typographical error.

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1 cases involve a Summit entity³ and a Cigna-affiliated entity, *Summit* is an individual action and
 2 *Pacific Recovery* is a putative class action suit. In *Summit*, a single plaintiff healthcare provider,
 3 Summit, seeks compensation for services rendered to ten patients. In *Pacific Recovery*, a group of
 4 four healthcare providers collectively seek compensation for services rendered to at least sixty
 5 patients and propose to represent an unknown number of “similarly situated out-of-network
 6 behavioral health providers” that provide IOP in the United States. Dkt. No. 6 at 4. Thus, the two
 7 suits clearly involve different provider plaintiffs and different patients. Moreover, Viant is a
 8 named defendant in *Pacific Recovery*, but not in *Summit*. These differences alone suggest that
 9 *Pacific Recovery* is likely to be far more expansive, expensive, and time-consuming than *Summit*,
 10 which weighs against consolidation.

11 Second, the two suits involve different treatment. The *Summit* insurance claims are mainly
 12 for Residential and Partial Hospitalization treatment, with only a small percentage of Intensive
 13 Outpatient claims remaining because Cigna has already investigated, litigated and negotiated
 14 certain Intensive Outpatient claims with Summit. Opp’n at 3. In contrast, the *Pacific Recovery*
 15 insurance claims are exclusively for IOT. The differences in the parties and the services at issue
 16 will impact the nature and scope of discovery such that consolidation is likely to lead to
 17 inconvenience and delay for the relatively smaller *Summit* case rather than promote efficiencies.

18 Third, the two suits involve different time frames. In *Summit*, the insurance claims are for
 19 treatment provided between September of 2014 and August of 2017. The complaint in *Pacific*
 20 *Recovery* does not define a class period. Thus, *Summit* is confined to a relatively manageable
 21 period of three years, whereas *Pacific Recovery* has no time limitation at all. A different time
 22 period alone may not necessarily weigh against consolidation. *See Medina v. Mealing*, 2006 WL
 23 8443382, at *2 (N.D. Cal. Feb. 2, 2006) (consolidating two cases with common questions of law
 24

25 ³ In *Summit*, Summit Estate, Inc. is the plaintiff. In *Pacific Recovery*, Summit Estate Inc. d/b/a
 26 Summit Estate Outpatient is one of four plaintiffs. Summit Estate Inc. d/b/a Summit Estate
 27 Outpatient represents that the two entities “are, functionally, predecessor and successor entities
 28 and are distinct companies.” Opp’n at 2. The management and ownership of the successor is
 different from the predecessor. *Id.* at 4. Further, the predecessor entity is not accredited by the
 Joint Commission, where as the successor is. *Id.* at 2.

1 and fact, even though the lawsuits each covered a different time period). Here, however, the
2 different time period for each case is one of several other differences between *Summit* and *Pacific*
3 *Recovery* that weigh against consolidation.

4 Fourth, although the two cases involve a number of the same legal claims, *Pacific*
5 *Recovery* includes much more expansive claims for violations of RICO, the Sherman Act, and
6 civil conspiracy. These additional claims may increase the scope of discovery and motion practice
7 in *Pacific Recovery* far beyond what is required for *Summit*. Cigna argues that the differences in
8 claims does not matter because they all rely on the same factual predicates, and further asserts that
9 the Court need find only one issue of law or fact in common to permit consolidation, citing *Power*
10 *Integrations, Inc. v. Chan-Woong Park*, 2019 WL 119969, at *2 (N.D. Cal. Jan. 7, 2019). In
11 *Power Integrations*, however, the parties were identical and there was a substantial overlap of
12 underlying facts. Unlike *Power Integrations*, the two cases before this Court do not involve
13 identical parties or a substantial overlap of underlying facts mainly because *Pacific Recovery*
14 includes expansive claims against Viant that are not present in *Summit*. Cigna's reliance on
15 *Hutchens v. Alameda County Social Servs. Agency*, 2008 WL 927899, at *2 (N.D. Cal. Apr. 4,
16 2008) is also misplaced. In *Hutchens*, the motion to consolidate was unopposed.

17 The different procedural posture of each case also weighs against consolidation, even
18 though the two cases are at the pleading stage. This is because the parties in *Summit* were involved
19 in an earlier filed suit, engaged in settlement discussions, and then discovery, followed by
20 mediation. Eventually the parties in *Summit* agreed to a dismissal without prejudice so that the
21 parties could attempt to negotiate a resolution. Previous versions of the *Summit* complaint have
22 already been subject to two motions to dismiss, and the operative *Summit* complaint now consists
23 of only those claims that survived. In contrast, the *Pacific Recovery* complaint is the subject
24 separate motions to dismiss by Cigna and Viant. Because *Summit* has progressed farther than
25 *Pacific Recovery*, consolidation is likely to produce inconvenience, delay and expense to plaintiff
26 in the *Summit* case.

27 The Court recognizes that there is a potential for inconsistent judgments, particularly as to

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1 the Summit entities' reimbursement claims for IOP treatment. Consolidation of *Summit* and
2 *Pacific Recovery*, however, is not the answer because the Summit entities' reimbursement claims
3 for IOP treatment represent only a small fraction of the total claims at issue in the two cases.
4 Further, the insurance claims at issue in *Summit* are mainly for Residential and Partial
5 Hospitalization treatment and therefore, may raise factual issues not present in *Pacific Recovery*.
6 Thus, consolidation for all purposes is not appropriate. *See Hughes v. Experian Info. Sols., Inc.*,
7 2017 WL 975969, at *2 (N.D. Cal. Mar. 13, 2017) (declining to consolidate for all purposes where
8 the merits of each plaintiff's case could potentially turn on case-specific facts).

9 **IV. CONCLUSION**

10 The Cigna entities have not carried their burden of showing that consolidation of *Summit*
11 and *Pacific Recovery* "will aid in the efficient and economic disposition of the case." *Klauber*
12 *Bros., Inc. v. Forever 21 Retail, Inc.*, 2015 WL 12720307, at *2 (C.D. Cal. Apr. 9, 2015). The
13 motion to consolidate the cases for all purposes is DENIED.

14 **IT IS SO ORDERED.**

15 Dated: February 16, 2021

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17 EDWARD J. DAVILA
18 United States District Judge

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