UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

THREE RIVERS PROVIDER NETWORK, Inc.,

Plaintiff,

vs.

MERITAIN HEALTH Inc. fka NORTH AMERICAN HEALTH PLANS, Inc.; CHRISTINE CALARCO; JOSEPH COFFEY; and DOES 1-100,

Defendants.

CASE NO. 07cv1900 WQH (BLM)

ORDER

HAYES, Judge:

The matter before the Court is Defendants' ex parte application for order requiring Plaintiff to file third amended complaint to conform operative complaint to the Court's July 23, 2008 order. (Doc. # 50).

On September 28, 2007, Plaintiff Three Rivers Provider Network, Inc. (Plaintiff) filed a complaint in this matter against Defendant Meritain Health, Inc. fka North American Health Plans, Inc. (Meritain). (Doc. # 1). On December 20, 2007, Plaintiff filed an amended complaint ("first amended complaint") against Defendants Meritain, Christine Calarco, and Joseph Coffey. (Doc. # 14.) The first amended complaint asserted claims for breach of contract, fraud, conversion, and violation of the Racketeering Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962(a)-(d). (Doc. # 14).

On January 9, 2008, Defendants Coffey and Calarco filed a motion to dismiss for lack of

personal jurisdiction. (Doc. # 21). On January 9, 2008, Defendants Meritain, Calarco, and Coffey filed a motion to dismiss for failure to state a claim. (Doc. # 22). On January 9, 2008, Plaintiff filed a motion for leave to file a second amended complaint. (Doc. # 23).

On July 23, 2008, the Court entered an order on Defendants motions to dismiss and Plaintiff's motion for leave to amend. (Doc. # 38). The Court ordered:

> Defendants motion to dismiss for failure to state a claim (Doc. # 21) is GRANTED in part and DENIED in part. The motion to dismiss is GRANTED with respect to Plaintiff's claims for violation of 18 U.S.C. §§ 1962(a) and 1962(b) of RICO. The motion to dismiss is further GRANTED as to Plaintiff's breach of contract claims against Defendants Calarco and Coffey. Plaintiff's breach of contract claim against Defendant Meritain is not dismissed. The motion to dismiss is DENIED with respect to Plaintiff's claims for conversion, fraud, and violation of 18 U.S.C. § 1962(c). The motion to dismiss for lack of personal jurisdiction (Doc. # 22) filed by Defendants Calarco and Coffey is DENIED. Plaintiff's motion for leave to file a Second Amended Complaint (Doc. # 23) is GRANTED. Plaintiff may file the Second Amended Complaint which it attached to the motion for leave to amend on or before Friday, August 15, 2008.

(Order, 24).

On July 24, 2008, Plaintiff filed the second amended complaint which included claims for relief for violation of 18 U.S.C. §§ 1962(a) and 1962(b) of RICO and breach of contract previously dismissed by the Court. (Doc. # 39). On September 5, 2008, Defendants filed an ex parte application for order requiring Plaintiff to file third amended complaint to conform operative complaint to the Court's July 23, 2008 order (Doc. # 50) on the ground that the second amended complaint includes claims previously dismissed by the Court. On September 8, 2008, Plaintiff filed a response in opposition to Defendants' ex parte application for an order requiring Plaintiff to file third amended complaint (Doc. # 51) on the ground that Defendants' request is unnecessary.

RULING OF THE COURT

The Court declines to order Plaintiff to file a third amended complaint. To the extent the second amended complaint includes claims previously dismissed, the prior ruling of this Court would apply as the law of the case.

IT IS HEREBY ORDERED that Defendants' ex parte application for order requiring Plaintiff to file third amended complaint to conform operative complaint to Court's July 23, 2008 order (Doc. # 50) is DENIED.

DATED: 9/10/08

WILLIAM Q. HAYES
United States District Judge