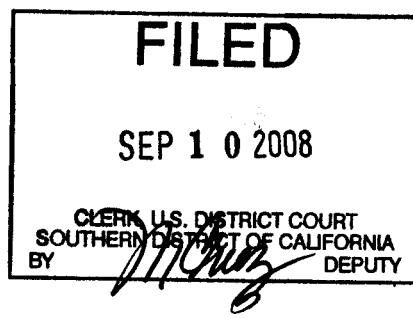


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

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

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

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

6 Defendants motion to dismiss for failure to state a claim (Doc. # 21) is
7 GRANTED in part and DENIED in part. The motion to dismiss is
8 GRANTED with respect to Plaintiff's claims for violation of 18 U.S.C.
9 §§ 1962(a) and 1962(b) of RICO. The motion to dismiss is further
10 GRANTED as to Plaintiff's breach of contract claims against
11 Defendants Calarco and Coffey. Plaintiff's breach of contract claim
12 against Defendant Meritain is not dismissed. The motion to dismiss is
13 DENIED with respect to Plaintiff's claims for conversion, fraud, and
14 violation of 18 U.S.C. § 1962(c). The motion to dismiss for lack of
15 personal jurisdiction (Doc. # 22) filed by Defendants Calarco and
16 Coffey is DENIED. Plaintiff's motion for leave to file a Second
17 Amended Complaint (Doc. # 23) is GRANTED. Plaintiff may file the
18 Second Amended Complaint which it attached to the motion for leave
19 to amend on or before Friday, August 15, 2008.

20 (Order, 24).

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

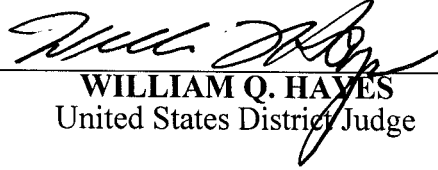
RULING OF THE COURT

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

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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