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

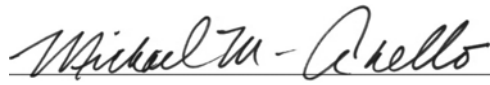
KENT E. KIMBERLY, M.D., an individual,  
  
Plaintiff,  
  
vs.  
  
SHARP REES-STEALY MEDICAL  
GROUP INC. GROUP LONG TERM  
DISABILITY INSURANCE PLAN,  
  
Defendant.

CASE NO. 08CV157-MMA (POR)  
  
**ORDER WITHDRAWING  
DEFENDANT'S MOTION TO  
STRIKE, OR IN THE  
ALTERNATIVE, TO DISMISS**  
  
[Doc. No. 5]

On September 3, 2009, the Court issued an order for Defendant to file a notice withdrawing its motion to strike, or in the alternative, to dismiss (Doc. No. 5). (Doc. No. 18.) Because Defendant has failed to comply with the Court's order, the Court hereby sua sponte orders the motion **WITHDRAWN** in accordance with the Court's September 3, 2009 order. Upon notification of the Ninth Circuit's ruling *en banc* in the case *Cyr v. Reliance Standard Life Ins. Co.*, Nos. 07-56869, 08-55234, Defendant shall contact Chambers to obtain a hearing date on a renewed motion, should it wish to file one.

**IT IS SO ORDERED.**

DATED: September 14, 2009

  
Hon. Michael M. Anello  
United States District Judge