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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: M.L. DEPUTY

The Estate of Ruben Nunez et al v. County of et al

Doc. 42

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

THE ESTATE OF RUBEN NUNEZ by
and through its successor-in-interest
LYDIA NUNEZ, ALBERT NUNEZ, and
LYDIA NUNEZ,

Plaintiff,

v.

COUNTY OF SAN DIEGO, et al,

Defendant.

Case No.: 3:16-cv-01412-BEN-MDD

**ORDER GRANTING DEFENDANT'S
MOTION FOR LEAVE TO FILE A
THIRD-PARTY COMPLAINT**

Presently before the Court is a Motion for Leave to File Third-Party Complaint filed by Defendant County of San Diego ("the County"). (Docket No. 29.) The Motion is unopposed.

"A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it." Fed. R. Civ. P. 14(a)(1). A defending party must seek leave if it seeks to file a third-party

1 complaint more than 14 days after serving the original answer. (*Id.*) District courts have
2 discretion permit or deny the filing of a third-party complaint, except when the third-
3 party complaint is filed within fourteen days of serving the original answer. Fed. R. Civ.
4 P. 14(a)(1).

5 On June 8, 2016, Plaintiffs filed a lawsuit against the County for several claims
6 arising out of the death of Ruben Nunez (“Ruben”) at the County’s Central Jail detention
7 facility. (Docket No. 1.) On July 5, 2016, the County filed an answer. (Docket No. 7.)
8 After obtaining the Court’s leave, Plaintiffs filed a First Amended Complaint (“FAC”) on
9 August 30, 2016. (Docket Nos. 14-15.) The County filed an answer to the FAC on
10 September 19, 2016. (Docket No. 19.) On October 31, 2016, the County filed this
11 Motion, seeking the Court’s leave to file a third-party complaint against Correctional
12 Physicians Medical Group, Inc. (“CPMG”), and Jorge Naranjo and Sara Hansen, two of
13 CPMG’s employees and/or agents. (Docket No. 29.) The County argues that its internal
14 investigation confirmed that, assuming there was any wrongdoing attributable to Ruben’s
15 death, such wrongdoing was committed by one or more of CPMG’s employees and/or
16 agents. Further, the County represents that CPMG entered into an agreement with the
17 County whereby CPMG was contractually obligated to defend and indemnify the County
18 for all claims arising out of CPMG’s performance of the agreement.

19 Additionally, the County requests that, if it is granted leave to file a third-party
20 complaint, it be allowed to delay filing of the complaint until January 30, 2017. The
21 County’s request is based on a California Code of Civil Procedure requirement that a
22 plaintiff give a defendant ninety days’ notice of his or her intent to sue for actions “based
23 upon” the defendant’s professional negligence. (Mot. at 4, citing Cal. Code Civ. Proc. §
24 364(a); *Preferred Risk Mut. Ins. Co. v. Reiswig*, 980 P. 2d 895, 897 (Cal. 1999). The
25

1 County does not concede that its claims against CPMG are subject to this provision, but
2 has nonetheless sent the requisite notice of intent to sue to each of the proposed third-
3 party defendants. (Mot. at 4.) The County believes that failure to wait until January 30,
4 2017 (the date of the expiration of the ninety days' notice), to file the third-party
5 complaint may result in its attorneys being subject to professional discipline. (Mot. at 4,
6 citing Cal. Civ. Code § 365 (“failure to comply with [Cal. Code Civ. Proc. § 364(a)] by
7 any attorney at law shall be grounds for professional discipline and the State Bar of
8 California shall investigate and take appropriate action in any cases brought to its
9 attention.”).)

10 Under California Code Civil Procedure § 364(a), “no action *based upon the health*
11 *care provider’s professional negligence* may be commenced unless the defendant has
12 been given at least 90 days’ prior notice of the intention to commence the action.” Cal.
13 Code Civ. Proc. § 364(a) (emphasis added). “Professional negligence” is defined as a
14 “negligent act or omission by a health care provider in the rendering of professional
15 services, which act or omission is the proximate cause of a personal injury or wrongful
16 death.” Cal. Code Civ. Proc. § 364(f)(2).

17 The County’s third-party complaint asserts five claims for relief: 1) breach of
18 contract; 2) express contractual indemnification; 3) implied contractual indemnity; 4)
19 equitable indemnity; 5) declaratory relief for judicial determination of the respective
20 rights and duties of the third-party plaintiffs and defendants. (Mot. Ex. A.) Except for
21 the request for declaratory relief, it appears to the Court that each of the County’s claims
22 for relief is predicated upon a contractual duty to defend and/or indemnify. (*Id.*) In other
23 words, the County’s suit is not based upon the proposed-third party defendants’
24 professional negligence *per se*, but is instead based upon their contractual duty to defend
25

1 and/or indemnify the County for any and all claims related to their agreement. (*Id.*)
2 Therefore, the Court is not persuaded that good cause exists to permit such an extensive
3 delay in the filing of the County's third-party complaint.

4 Accordingly, the Motion is **GRANTED**. Defendant is granted leave to file a third-
5 party complaint against CPMG, Jorge Naranjo, and Sara Hansen, lodged as Exhibit A to
6 the Motion, within **three (3) days** of the date this Order is filed.

7
8 DATED: December 07, 2016


HON. ROGER T. BENITEZ
United States District Judge