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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 KENNETH J. MOSER, individually and
12 on behalf of all others similarly situated,
13 Plaintiff,

14 v.

15 HEALTH INSURANCE
16 INNOVATIONS, INC., a Delaware
17 corporation; NATIONAL CONGRESS
18 OF EMPLOYERS, INC., a Delaware
19 corporation; COMPANION LIFE
20 INSURANCE COMPANY, a South
21 Carolina corporation; DONISI JAX, INC.,
22 a Florida corporation also known as
23 Nationwide Health Advisors; HELPING
24 HAND HEALTH GROUP, INC., a
25 Florida corporation; ANTHONY
26 MARESCA, an individual; and
27 MATTHEW HERMAN, an individual,
28 Defendants.

Case No.: 17-cv-1127-WQH-KSC

ORDER

HAYES, Judge:

On December 3, 2018, Plaintiff Kenneth J. Moser filed a Motion for Class Certification. (ECF No. 3). On August 7, 2019, the Court issued an Order granting the Motion for Class Certification. (ECF No. 145). The Court declined to consider Defendant

1 Health Insurance Innovations’ (“HII”) argument that the Court “cannot exercise specific
2 jurisdiction over a non-resident defendant with respect to non-resident class claims”
3 pursuant to *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017). (*Id.* at 8).
4 The Court determined that “HII waived its personal jurisdiction challenge,” because HII
5 did not raise the challenge in a pre-answer motion. (*Id.* at 9). The Court further determined
6 that Plaintiff met the requirements of Rule 23(a) and Rule 23(b)(3) of the Federal Rules of
7 Civil Procedure and certified two nationwide subclasses.

8 Defendants HII and National Congress of Employers, Inc. (“NCE”) appealed. On
9 September 1, 2021, the Court of Appeals for the Ninth Circuit issued an Opinion vacating
10 this Court’s class certification Order and remanding. (ECF No. 171 at 4-25; *Moser v.*
11 *Benefytt, Inc.*, 8 F.4th 872 (9th Cir. 2021)). The Ninth Circuit stated:

12 We hold that the district court erred in concluding that HII waived its personal
13 jurisdiction objection to class certification by failing to assert the defense at
14 the Rule 12 stage.

15 . . .

16 Because it found the issue waived, the district court did not address the merits
17 of HII’s *Bristol-Myers* objection to class certification. Although HII asks us
18 to resolve that issue now, . . . we leave that matter for the district court on
19 remand. . . . And because the permissible scope of the certified class (and
20 record) may change, we do not reach HII’s other arguments on why class
21 certification under Rule 23 was otherwise improper.

22 We vacate the class certification order and remand this case to the district
23 court for proceedings consistent with this decision.

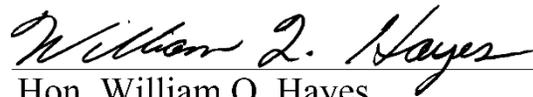
24 (ECF No. 171 at 13, 17). The mandate was issued on September 1, 2021.

25 On November 17, 2021, the parties filed status reports. (ECF Nos. 175, 176).
26 Plaintiff requests that the Court allow supplemental briefing “solely” on “the application
27 of *Bristol-Myers*.” (ECF No. 175 at 1-2). Plaintiff contends that “[a]ll of the remaining
28 issued related to class certification that were previously ruled on should still apply,”
because “[t]he Ninth Circuit’s ruling did not touch the Rule 23 class factors in any way.”
(*Id.* at 2). Defendants Donisi Jax, Inc., HII, Companion Life Insurance Company Inc., and

1 NCE (collectively, “Defendants”) request that the Court issue a briefing schedule for any
2 renewed motion for class certification. Defendants contend that “there is no certified class
3 in this case,” and “[i]f Plaintiff chooses to seek class certification again, he has the burden
4 to establish that his proposed class meets the requirement of [Rule 23].” (ECF No. 176 at
5 4). The Ninth Circuit has vacated this Court’s class certification Order.

6 IT IS HEREBY ORDERED that Plaintiff shall file any motion for class certification
7 on or before January 14, 2022. Defendants shall file any opposition to the motion for class
8 certification on or before February 28, 2022. Plaintiff shall file any reply on or before
9 March 30, 2022. Any motion for class certification will be without oral argument, unless
10 otherwise ordered by the Court.

11 Dated: November 19, 2021


12 Hon. William Q. Hayes
13 United States District Court
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