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and MEADOWVIEW IPA MEDICAL GROUP, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

PRIME PARTNERS IPA OF TEMECULA, INC., a California Corporation, and MEADOWVIEW IPA MEDICAL GROUP, INC., a California Corporation,

Plaintiffs,

v.

KALI P. CHAUDHURI, an individual, HEMET COMMUNITY MEDICAL GROUP, INC., a California corporation; KM STRATEGIC MANAGEMENT, LLC, a California Limited Liability Company, MICHAEL FOUTZ, an individual, WILLIAM E. THOMAS, an individual, and DOES 1 through 100, inclusive,

Defendants.

CASE NO. ED CV-11-01860 ODW (DTBx)

PLAINTIFFS' OPPOSITION TO DEFENDANT KALI P. CHAUDHURI, HEMET COMMUNITY MEDICAL GROUP, INC., AND KM STRATEGIC MANAGEMENT LLC'S MOTION TO STRIKE PORTIONS OF FIRST AMENDED COMPLAINT

DATE: February 6, 2012
TIME: 1:30 pm
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I. INTRODUCTION

The First Amended Complaint ("FAC") in this matter states claims against defendants for violation of the federal racketeering statutes ("RICO") under 18 U.S.C. §1962 (c) and (d), and provides a timeline of relevant historical facts about the nature and extent of the defendants' criminal enterprises. Defendants' complaints about the revelation of background information which is necessary to inform the court of the nature of the dispute and provide context for the harm done to plaintiffs is little more than a transparent attempt to exercise a line item veto over allegations which have direct bearing on the dispute between the parties.

The fact that defendants would like to bury the truth of their historical business dealings in the hopes that everyone will ignore their unsavory past and pretend that they come before the court as innocents is farcical. Defendants may not use FRCP 12(f) to limit the allegations of wrongful conduct to what defendants deem is an acceptable level of unwholesomeness. Defendants here simply mistake the nature of what a Rule 12(f) motion is intended to do. Where the behavior of defendants is itself "scandalous," allegations that recite such behavior are not subject to suppression by a Rule 12(f) motion to strike.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(f) provides that a court "may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Motions to strike are disfavored and "will usually be denied unless the allegations have no possible relation to the controversy and may cause prejudice to one of the parties." *Friedman v. 24 Hour Fitness USA, Inc*., 580 F. Supp. 2d 985, 990 (C.D. Cal. 2008). The Ninth Circuit has defined "immaterial" matter as "that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S.

517 (1994). Similarly, "impertinent" refers to allegations that are not responsive or relevant to the issues involved in the action and which could not be admitted as evidence in the action. *Id*. As indicated by the language of the rule, "the function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial . . . " *Id*.

Motions to strike are generally disfavored because of the limited importance of pleading in federal practice and because such motions often are used as a delay tactic. *See, e.g. Securities and Exchanges Comm'n v. Levin*, 232 F.R.D. 619, 624 (C.D. Cal. 2005). As a general rule, motions to strike "should not be granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." *Neveau v. City of Fresno*, 392 F. Supp. 2d 1159, 1170 (E.D. Cal. 2005) (citing *Colaprico v. Sun Microsystems, Inc*., 758 F. Supp. 1335, 1339 (N.D. Cal. 1991)); *see also Shabaz v. Polo Ralph Lauren Corp*., 586 F. Supp. 2d 1205, 1209 (C.D. Cal., 2008) (same). Before granting a motion to strike, courts frequently require a showing of prejudice by the moving party. *Levin*, 232 F.R.D. at 624; *see also Cal. Dept. of Toxic Substances Control v. Alco Pacific, Inc*., 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002). In considering a motion to strike, the court views the pleadings in the light most favorable to the non-moving party and resolves any doubt as to the relevance of the challenged allegations in favor of the plaintiff. *Id*.

III. LEGAL ARGUMENT

Defendants have to go far afield to find any support for the position that they are entitled to strike factual allegations that they regard as either scandalous or "slanderous" from the complaint (Mot., p. 5). Relying on a hodgepodge of out-of-circuit caselaw, defendants have cobbled together the novel argument that they are entitled to have background material about their misconduct stricken from the complaint unless plaintiffs can show that its inclusion is absolutely essential to proof of any cause of action against defendants. (Mot., pp. 5-8, generally). In doing so,

defendants misstate the law, attempt to improperly shift the burden, and misconstrue the nature of the FAC.

Defendants' position that Chaudhuri should not have to answer to plaintiffs for allegations that do not concern wrongs done them— i.e., that Chaudhuri should not have to address the genesis of his racketeering enterprise—misconstrues the nature of racketeering enterprises and RICO claims in general. No case law cited by defendants holds that plaintiffs are prohibited from spelling out the extent and scope of a long-standing and continuing criminal enterprise which they have been the victims of, but instead are limited to describing only that part of the scheme alleged to have caused them harm. On its face, defendants' position seeks to bar the introduction of background facts which provide the context for plaintiffs' claims and prohibit plaintiffs from pleading facts showing the defendants' scheme is not an accident, mistake, or one-off event, but a multifaceted enterprise intentionally designed to create the sort of harm alleged in the FAC.

A. Dr. Chaudhuri's History of Fleecing Other Companies is Relevant to Show That His Scheme to Defraud Plaintiffs Was The Result of Intentional Planning

Though defendants aver that "Dr. Chaudhuri unequivocally denies all of the alleged wrongdoing described in Plaintiff's FAC" (Mot., p. 5, lns. 19-20), defendants misunderstand what Rule 12(f) is intended to do. It is not intended as a tool for contesting allegations that the Court must accept as true at the pleadings stage. *See, e.g., Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009) (at inception of case the court must accept as true all "well-pleaded factual allegations"). Nor is intended to provide defendants with a means of erasing core allegations concerning their wrongdoing, deception, fraud, misconduct or propensity to engage in such acts. Defendants may wish to erase history by calling it "slander," but Dr. Chaudhuri's misdeeds and the scandals associated with his business dealings have not only been the subject of

repeated litigation and a mountain of investigative news articles, but have managed to find their way into the annals of deceptive medical practice, as commemorated by the Pulitzer Prize winning team of Donald Barlett and James Steele in their book Critical Condition: How Health Care in America Became Big Business — and Bad Medicine (Doubleday. 2004). If Dr. Chaudhuri felt he had been slandered by inquiry into his business practices, he was free to sue Doubleday and/or Barlett and Steele for putting pen to paper and disseminating information that Chaudhuri now asserts is "scandalous." That he did not do so speaks volumes.

It is horn book law that "[i]n cases alleging fraud or misrepresentation, proof that the defendant perpetrated similar deceptions frequently is received in evidence." McCormick on Evidence, 4th Ed., §197 (1992). Such an admission is not predicated on the theory of "once a cheat, always a cheat" (*Id.*) – which is the proposition defendants seem to be arguing against – but on the theory that evidence of other frauds perpetrated by defendants may suggest that "defendant knew that his alleged misrepresentation was false," (*Id.*), or indicate that "defendant's participation in an alleged fraud or scheme was not innocent or accidental." (*Id.*) Plaintiffs reiterate that they are entitled to plead facts that show there can be no defense of accident, mistake or inadvertence by Chaudhuri and his subordinates to claims that they have engaged in a long-running fraudulent scheme which has now swept up plaintiffs in its path. That the allegations of the FAC reflect poorly on defendants is no argument that they should be stricken; rather, the fact that they have engaged in such wrongdoing repeatedly, over such an extended period of time, demonstrates that the allegations are directly relevant to rebut any defenses ultimately raised by defendants. Putting aside defendants' protestations of innocence, the law is clear that where the allegations sought to be stricken might bear on an issue in the litigation, the court must deny the motion. *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004). Here, the allegations are plainly relevant, and any doubts about their relevancy must be resolved against defendants. *Id.*

B. Defendants' Role in Hacking Medical Databases and Forging Referrals is Relevant to Allegations of Forgery in the First Amended Complaint

Again, defendants intentionally misconstrue the nature of the allegations in the FAC to set up a straw man argument that is nonsensical. Contrary to defendants' averment, plaintiffs do not seek to hold Dr. Chaudhuri liable herein for wrongdoing he has committed against non-parties. The allegations that defendants instructed an employee to remotely access a doctor's computer and log in as someone else, without authorization to do so, for the purpose of creating a false referral for an MRI (i.e., a forged referral) are directly relevant to allegations in the FAC that defendants' scheme employs "forgery" as a commonplace device. Indeed, the FAC alleges that defendants forged Dr. Dada's signature on a Physician's Services Agreement ("PSA") sometime in 2009 in an effort to block Prime Partners from leaving HCMG and entering into a contract with any competing independent practice association. (FAC, ¶¶41-59). The FAC also alleges that defendants forged doctors' signatures on thousands of letters to patients. (*See, e.g.*, FAC, ¶70).

Defendants make no legal argument as to how the complained-of allegations of forgery fall outside the scope of what is relevant. Without citation to authority, defendants merely claim that the allegations "disparage" Dr. Chaudhuri, after which defendants make various throw-away comments about the "ridiculousness" of alleging that the architect of a widespread conspiracy would stoop so low as to dirty his own hands with a single episode of computer hacking. Again, the mere fact that defendants do not like the allegations against them is not a basis for a motion to strike. Plaintiffs are entitled to allege that defendants employ forgery as part of their scheme, and to provide relevant examples of such conduct to rebut the anticipated defenses of inadvertence, mistake, accident and other related claims that defendants' conduct was not intentional.

C. Defendants' Orders to Cut Off Access to Patient Files is Relevant to Plaintiffs' Allegations of an Overarching Scheme

Defendants argue that plaintiffs are prohibited from alleging details of defendants' extortionate scheme that do not directly relate to the harm suffered by plaintiffs. As justification for their position, defendants aver that "these allegations serve only to disparage Defendants in the eyes of the medical community." (Mot., p. 7) Defendants' argument has no basis in law or fact. Plaintiffs are entitled to plead allegations showing the length and breadth of defendants' RICO scheme, provide specific examples of how the scheme operates, and provide evidence of wrongdoing inflicted on others by the scheme. In the case at bar, plaintiffs have alleged that defendants illegally cut off access to patient records when another non-party medical group complained to defendants that $500,000 had mysteriously disappeared from the medical group's bank accounts.

In order to state a valid RICO claim, a plaintiff must (among other things) plead a "pattern" of racketeering activity. *See, e.g., Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496 (1985). A "pattern" does not exist absent a continued threat of criminal activity. *H.J. Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 239 (1989). A single episode, while it may consist of several discrete events, does not constitute a pattern of racketeering activity. *Sedima*, 473 U.S. at 496 n.14. By attempting to strike factual allegations by which plaintiffs allege a pattern of racketeering activity, defendants improperly attack the bases of the RICO claims against them. As defendants know, a single scheme and injury toward a single victim is inadequate to allege either a pattern of racketeering activity or a threat of continued criminal activity. *See Medallion Television Enterprises, Inc. v. SelecTV of California, Inc.*, 833 F.2d 1360, 1361-62 (9th Cir. 1987); *Edmondson & Gallagher v. Alban Towers Tenants Ass'n*, 48 F.3d 1260, 1265, 310 U.S. App. D.C. 409 (D.C. Cir. 1995).

In a nutshell, defendants are moving to strike certain allegations that related to the RICO claim, while concurrently bringing a motion to dismiss on the grounds that

there are not enough allegations of a pattern of racketeering to justify the RICO claim. Although it would be clever to get the Court to strike from the complaint specific detailed allegations of wrongdoing, and then move to dismiss the complaint on the absence of specific detailed allegations of wrongdoing, but the attempt here is transparent, improper and not legally justified.

No authority exists – and none is cited by defendants – that would support their attempts to whittle away at the edges of the FAC and eliminate the bad acts that form the pattern of their criminal enterprise. Defendants have offered nothing to demonstrate the allegations against them are improper, save their own unsupported conjecture, which is not entitled to any weight whatsoever.

D. Plaintiffs' References to Defendants' Improper Termination of Contracts With Non-Parties Is Entirely Proper and Not Subject to Being Stricken

Defendants' repetitive claim that plaintiffs may not include allegations about defendants' scheme if it shows that non-parties have been defrauded is simply wrong. Plaintiffs have every right to include allegations that defendants improperly terminated their contracts with non-party Crown Surgery upon Crown's discovery that defendants had underpaid their obligations by some $400,000. Plaintiffs are entitled to lay out the full extent of defendants' scheme, in the effort to show that it is a continuing criminal enterprise and an ongoing threat. *See, e.g., Klay v. Humana, Inc.*, 382 F.3d 1241, 1255 (11th Cir. 2004) (affirming RICO class against HMOs for conspiring to defraud physicians of payments due for medical services through use of systemic uniform activities, such as medical necessity requirements, actuarial guidelines, and automated claims systems with adjusted codes and reimbursement rates, all of which were "designed to deny, delay or decrease reimbursement or payment to physicians.") Defendants cite no precedent which would suggests that a racketeering enterprise may have only one target or that only a primary target may have standing, and there is

nothing improper in plaintiffs pointing out the identities of other entities defrauded by the fraudulent scheme in the course of defendants' racketeering activity. *Morning Star Packing Co. v. SK Foods, L.P.*, 2011 U.S. Dist. LEXIS 113046, 18-19 (E.D. Cal. Sept. 30, 2011) ("an injury can be direct even if the plaintiff is not the only target of the defendant's misconduct").

E. All Complained-Of Allegations Are Relevant to the Criminal Enterprise Alleged

Defendants' argument that plaintiffs are prohibited from detailing the background and history of defendants' criminal enterprise finds no support in either the Tennessee or New York district court cases defendants rely on for that proposition. Both cases are easily distinguished, and neither binds this court. The court in *Overnight Trasp. Co. v. Int'l Broth. of Teamsters*, 168 F.Supp.2d 826, 850 (W.D. Tenn. 2001) merely held that the evidence of violence that plaintiffs sought to introduce – from as far back as 1945 – was too remote to be more than marginally relevant. The court in *Toto v. McMahan, Brafman, Morgan & Co.*, 1995 U.S. Dist. LEXIS 1399 (S.D.N.Y. Feb. 7, 1995) merely struck allegations related to criminal tax fraud and the indictments of alleged co-conspirators on the grounds that (a) criminal tax fraud did not give rise to RICO claims and (b) that reference to defendants' indictments could cause undue prejudice.

Here, defendants have made no argument that inclusion of the complained-of material is too remote to be relevant or that it prejudices them in any way, despite the fact that it is their burden to show that inclusion of the matter will prejudice them. *See, e.g. Securities and Exchanges Comm'n v. Levin*, 232 F.R.D. 619, 624 (C.D. Cal. 2005) (defendant must demonstrate prejudice to prevail on motion to strike); *Sec. and Exch. Comm'n v. Sands*, 902 F.Supp. 1149, 1166 (C.D.Cal. 1995) (same). In the absence of convincing proof that they will be so prejudiced, defendants' argument fails.

IV. CONCLUSION

When stripped of the cloak of rhetoric, defendants' only argument appears to be that they do not like having allegations about their prior misconduct – no matter how relevant – stated in the instant FAC. This is no argument for striking the material at issue, as the standard for Rule 12(f) motions does not hinge on whether defendants are unhappy with the allegations made against them (as *no defendant* would be), but whether they are beyond the pale of relevance. Plaintiffs respectfully submit that the complained-of allegations are directly relevant to the understanding of the criminal enterprise alleged, and that defendants' motion to strike is without merit. "The purpose of a 12(f) motion is to avoid rather than increase the expense of unnecessarily litigating picayune issues." *J&J Sports Prods. v. Vizcarra*, 2012 U.S. Dist. LEXIS 2238 (N.D. Cal. Jan. 9, 2012). Here, however, defendants have filed a motion that has no support in existing caselaw, and unnecessarily caused all the parties to undergo litigation expenses that are unjustified by defendants' position.

Defendants have failed to, and cannot, meet the required burden to prevail on a Rule 12(f) motion, and plaintiffs therefore respectfully request that this Honorable Court deny the motion in its entirety.

Date: January 17, 2012

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