California Chiropractic Association ("CCA") vs. MedRisk, LLC Lawsuit Update

MedRisk's demurrers to the First Amended Complaints filed by IPTC and CCA (aka CalChiro) are **OVERRULED**. Judge admonishes counsel for MedRisk and they now have 10 days to file answers.

Here is the official filing by the Superior Court.

9/28/2020 - County of Alameda Superior Court - This Tentative Ruling is made by Judge Brad Seligman. Plaintiff Independent Physical Therapists of California ("IPTC") and Plaintiff California Chiropractic Association ("CCA") have filed substantially identical First Amended Complaints against Defendant MedRisk, LLC ("MedRisk") and an affiliated entity MedRisk HoldCo, LLC, in cases numbered RG19045049 and RG19045051, respectively. The parties have stipulated to dismiss MedRisk HoldCo, LLC as a defendant.

MedRisk now demurs to both First Amended Complaints on identical grounds. It argues that both Plaintiffs lack standing, either personal or associational, to assert claims under the Unfair Competition Law ("UCL") (Bus. & Prof. Code §§ 17200, et seq.). It argues that the Court should abstain from adjudicating this case under the doctrine of primary jurisdiction. It also argues that the relief requested by Plaintiffs is improper under the UCL.

For the reasons discussed below, the demurrer is OVERRULED.

PROCEDURAL MATTERS

Neither of MedRisk's demurrers included a declaration attesting that the parties met and conferred before it filed these demurrers, as required by Code of Civil Procedure ("CCP") Section 430.41. **The Court admonishes counsel for Defendants that it expects all parties to comply with meet- and-confer requirements in the CCP, rules of court, and local rules.** Because Plaintiffs did not object to this and replied to Defendant's arguments on the merits, the Court will

exercise its discretion to consider the Demurrers on their merits rather than continuing this hearing and ordering the parties to comply with Section 430.41.

The Court further notes that MedRisk argues in a footnote to its reply memoranda that class allegations are insufficient in this case. This does not appear as a ground for objection in either of MedRisk's demurrers, however. This ground for objection therefore is not properly before the Court, and the Court does not consider the sufficiency of the class action allegations in determining whether to sustain or overrule MedRisk's demurrers, and this Order is made without prejudice to MedRisk's raising the sufficiency of the class allegations by another appropriate motion.

LEGAL STANDARDS

The standard for construing a complaint on demurrer is long-settled: "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (Blank v. Kirwan (1985) 39 Cal.3d 311, 318.) When plaintiffs assert claims under the Unfair Competition Law (Bus. & Prof. Code §§ 17200 et seq.), they must plead facts establishing a cause of action under the UCL with "reasonable particularity." (Gutierrez v. Carmax Auto Superstores California (2018) 19 Cal. App. 5th 1234, 1261.)

DISCUSSION

A. Plaintiffs Allege Standing under the UCL

To state a claim under the UCL, a plaintiff must allege "injury in fact" and that it has "lost money or property as a result of the unfair competition." (Bus. & Prof. Code § 17204.) Plaintiffs with standing can seek equitable relief. (Bus. & Prof. Code §§ 17203, 17204; Korea Supply Co. v. Lockheed Martin Corp. (2003) 29 Cal. 4th 1134, 1149.)

Plaintiffs allege that they have been forced to respond to complaints by their members, to counsel their members about their rights and obligations with regard to MedRisk, and to dedicate limited time and resources to investigate and combat MedRisk's allegedly illegal practices, independent of this litigation. (IPTC FAC ¶¶ 25-29; CCA FAC ¶¶ 25-29; cf. Animal Legal Defense Fund v. LT Napa Partners LLC (2015) 234 Cal.App.4th 1270, 1278-1284 [finding, in face of anti-SLAPP motion, probability of showing standing based on organizational plaintiff's on non-litigation expenditures

to combat defendant's allegedly illegal conduct].) On demurrer, the Court takes these allegations as admitted, and they are reasonably particular enough that Defendant can engage in meaningful discovery to probe the truth of those allegations if it decides to do so.

B. The Doctrine of Primary Jurisdiction Does Not Apply

The doctrine of primary jurisdiction is a discretionary doctrine of abstention, under which a Court may properly refuse to hear "a case properly filed in a court" when "an administrative agency . . . also has statutory power to resolve some or all of the issues . . [and] those issues are within the agency's special competence." (9 Witkin, Cal. Proc. 5th Admin Proc § 126 (2020).)

MedRisk argues that this case necessarily involves complex issues of economic policy best left to the Department of Worker's Compensation or the California Legislature. (citing Hambrick v. Healthcare Partners Med. Grp. (2015) 238 Cal.App.4th 124, 147-148.) In that case, the Court of Appeal upheld the superior court's decision to abstain from a UCL case alleging that the Defendant was operating as an unlicensed health care service plan in violation of the Knox-Keene Act and Department of Managed Health Care regulations. In that case, the court found that the question of what constituted a "health care service plan" presented complex issues of public policy requiring extensive and unduly burdensome steps to enforce.

The public policy in this case is both clear and established by statute. (Lab. Code §§ 139.32(d)(2), 3215, 3820 [prohibiting offering or receiving discounts in exchange for referrals under the Worker's Compensation Law].) The questions of statutory interpretation in this case will not require complex determinations of public policy; that policy has already been considered and set by the California Legislature. MedRisk has pointed to no statutory or regulatory authority for the proposition that the Division of Workers' Compensation or Department of Labor has exclusive or primary responsibility for enforcing these sections.

C. Plaintiffs' Claims Are Not Irremediable as a Matter of Law

MedRisk also argues that deciding this case will require the Court to individually reform each of its provider contracts, which the Court cannot take as admitted for purposes of its demurrers. **The First Amended Complaints allege that MedRisk engages in a business practice of unlawfully referring patients to providers who provide larger discounts on their services, with MedRisk retaining the difference as profits. The Court may remedy an illegal practice by enjoining MedRisk to cease that business practice. MedRisk has not offered authority**

persuasively showing that contract-by-contract reformation process is necessary as a matter of law.

ORDER

MedRisk's demurrers to the First Amended Complaints filed by IPTC and CCA are OVERRULED. MedRisk is ORDERED to file its answer to these complaints within 10 court days of service of notice of this Order, or on any later date to which the relevant Plaintiff may stipulate.

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