

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA, and the
STATE OF INDIANA, and *ex rel.* THOMAS P.
FISCHER,

Plaintiffs,

vs.

COMMUNITY HEALTH NETWORK, INC.,
COMMUNITY HEALTH NETWORK
FOUNDATION, INC., COMMUNITY
PHYSICIANS OF INDIANA, INC.,
VISIONARY ENTERPRISES, INC.,
COMMUNITY SURGERY CENTER-NORTH,
COMMUNITY SURGERY CENTER- SOUTH,
COMMUNITY SURGERY CENTER-EAST,
COMMUNITY SURGERY CENTER-
HAMILTON, COMMUNITY SURGERY
CENTER-KOKOMO, COMMUNITY
SURGERY CENTER-NORTHWEST,
HANCOCK SURGERY CENTER,
COMMUNITY ENDOSCOPY CENTER, and
COMMUNITY DIGESTIVE CENTER,

Defendants.

Case No.: 1:14-cv-1215-RLY-DLP

**RELATOR’S MOTION FOR LEAVE OF COURT
TO FILE SECOND AMENDED COMPLAINT**

Relator Thomas P. Fischer (“Fischer”), by counsel and pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, respectfully requests that this Court grant him leave to file his Second Amended Complaint (attached as Exhibit 1). In support of his motion, Fischer states as follows:

1. Motions for leave to amend the pleadings shall be freely given when justice so requires. Fed. R. Civ. Pro. 15(a)(2).

2. Fischer's First Amended Complaint was filed October 15, 2015, in camera and under seal pursuant to 31 U.S.C. § 3730.

3. Summonses have not yet been issued to Defendants by Relator nor have Defendants been served with the First Amended Complaint by Relator; therefore, responsive pleadings have not yet been filed. The Court gave Relator 120 days to serve his complaint (or by April 21, 2020) (ECF 93), following the Court's lifting of the seal.

4. In light of the somewhat unusual procedural posture of this False Claims Act case, Fischer may not technically require leave of Court to amend, but out of an abundance of caution, seeks an order permitting further amendment.

5. In the four years since filing the First Amended Complaint, continued investigation of claims has been ongoing and warrants further amendment.

6. In the four years since filing the First Amended Complaint, some of the Defendants have changed their business names on file with the State of Indiana, which also warrants further amendment.

7. On or about August 8, 2019, The United States of America filed a Motion to Intervene and on January 6, 2020, the Government filed its complaint in intervention.

8. Fischer seeks to amend his First Amended Complaint to address issues raised by the United States of America in its Motion to Intervene, its Complaint in Intervention, and evidence and information that has come to light over the past nearly four years.

9. Fischer seeks to amend his First Amended Complaint to add new claims and Defendants based upon further evidence and information developed over the past nearly four years.

10. In the interest of preserving Court and litigation resources, Relator seeks to have the operative complaint, *e.g.* the Second Amended Complaint, before the Court now in order to

avoid the potential scenario of the Court managing two rounds of briefing on a Motion to Dismiss, one on the First Amended Complaint and a second round on the Second Amended Complaint.

11. Should the Court grant Plaintiff's Motion for Leave to Amend, Relator will serve Summonses and the Second Amended Complaint to all Defendants.

12. Counsel for Relator has conferred with counsel for the United States of America about this Motion. The United States has no objection to this Motion.

13. Counsel for Relator has conferred with counsel for Community Health Network requesting their consent to this Motion. As of the time of this filing, Community Health Network's counsel, who just filed appearances in the case today, has not responded to that request.

WHEREFORE, Relator Thomas P. Fischer respectfully requests that this Court grant his Motion for Leave of Court to File Second Amended Complaint and accept the attached Second Amended Complaint for immediate filing.

Respectfully submitted,

/s/ Kathleen A. DeLaney

Kathleen A. DeLaney (#18604-49)

DELANEY & DELANEY LLC

3646 N. Washington Blvd.

Indianapolis, IN 46205

Tel. 317.920.0400

Fax 317.920.0404

Kathleen@delaneylaw.net

Timothy P. McCormack

VAN MEER & BELANGER PA

215 Commercial Street

4th Floor

Portland, ME 04101

tmccormack@vblawfirm.com

Jay P. Holland

Veronica B. Nannis

JOSEPH, GREENWALD & LAAKE, P.A.

6404 Ivy Lane, Suite 400

Greenbelt, MD 20770

Tel: (301) 220-2200

Fax: (301) 220-1214

jholland@jgllaw.com

vnannis@jgllaw.com

Attorneys for Relator Thomas P. Fischer

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2020, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CMECF system.

Arthur S. DiDio
Andy J. Mao
Sara McLean
Kelly A. Quinn
U.S. Department of Justice
300 North Los Angeles Street
Federal Building, Room 7516-110
Los Angeles, CA 90012
Arthur.Di.Dio@usdoj.gov

Shelese Woods
Justin Olson
Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
10 West Market Street, Suite 2100
Indianapolis, IN 46204
Shelese.woods@usdoj.gov
Justin.olson@usdoj.gov

Eric Parker Babbs
Office of the Indiana Attorney General
Medicaid Fraud Control Unit
8005 Castleway Drive
Indianapolis, IN 46250
Eric.babbs@atg.in.gov

Mark Mader
Office of the Attorney General of Indiana
Medicaid Fraud Control Unit
8005 Castleway Drive
Indianapolis, IN 46250
Mark.mader@atg.in.gov

Marc T. Quigley
Thomas J. Costakis
KRIEG DEVAULT LLP
mquigley@kdlegal.com
tcostakis@kdlegal.com

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