

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KIMBERTON HEALTHCARE	:	
CONSULTING, INC. d/b/a DIALYSISPPPO,	:	
	:	CIVIL ACTION
Plaintiff,	:	
vs.	:	NO. 10-0150
	:	
SPECIALTY CARE MANAGEMENT,	:	
LLC, DEVON HEALTH SERVICES, INC., and	:	
GERALD A. YOUNG, individually and as agent	:	
of SPECIALTY CARE MANAGEMENT, LLC,	:	
	:	
Defendants.	:	

MEMORANDUM

On March 31, 2010, Plaintiff Kimberton Healthcare Consulting, Inc. (“Plaintiff”) filed its First Amended Complaint against Defendants Specialty Care Management, LLC (“Specialty Care”), Devon Health Services, Inc. (“Devon Health”), and Gerald A. Young, alleging that Defendants breached a non-disclosure agreement and unlawfully disclosed confidential trade secrets and other confidential information, and invoking the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”) as its (sole) basis for federal jurisdiction. Am. Compl., ECF No. 14. On April 2, 2010, Defendant Devon Health filed a motion to dismiss, alleging primarily that Plaintiff failed to state a claim under RICO, and that the Court therefore lacked subject matter jurisdiction. Mot. Dismiss, ECF No. 15; Mem. Supp. Mot. Dismiss, ECF No. 16.

On October 21, 2010, I issued an order stating that if Plaintiff did not withdraw its RICO claim by October 25, 2010, it should file a RICO statement by November 8, 2010. Order, Oct. 21, 2010, ECF No. 26. On November 3, 2010, Defendant Devon Health filed an affidavit representing its lack of association with Defendant Specialty Care. Atkinson Aff., ECF No. 27. On November 8, 2010, instead of filing a RICO statement, Plaintiff filed a motion for leave to

file a second amended complaint which no longer pursues the RICO claim. Mot. Leave to File, ECF No. 28. However, the Second Amended Complaint invokes supplemental jurisdiction as the basis for federal jurisdiction and pursues the state law claims of 1) violation of Pennsylvania's Uniform Trade Secrets Act, 2) unfair competition, 3) breach of contract, 4) conversion, 5) civil conspiracy, and 6) vicarious liability and respondeat superior.¹ *Id.* Ex. A.

Leave to amend pleadings should be freely granted when justice so requires. Fed. R. Civ. P. 15. Therefore, I will grant Plaintiff's motion for leave to file a second amended complaint.

The supplemental jurisdiction statute, 28 U.S.C. § 1367, states that “[t]he district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction.” The Third Circuit has clarified that “‘where the claim over which the district court has original jurisdiction is dismissed before trial, the district court must decline to decide the pendent state claims unless considerations of judicial economy, convenience, and fairness to the parties provide an affirmative justification for doing so.’” *Hedges v. Musco*, 204 F.3d 109, 123 (3d Cir. 2000) (quoting *Borough of West Mifflin v. Lancaster*, 45 F.3d 780, 788 (3d Cir. 1995)).

In this case, the claim giving rise to original jurisdiction has been withdrawn before trial, even before discovery has begun, and only state law claims remain. The declination of supplemental jurisdiction is therefore not a question of discretion,² but rather duty. As other

¹ Moreover, there is no other basis for federal jurisdiction, no other federal law claims, discernible from the complaint. *See, e.g.*, 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1206 (3d ed. 2010) (“[T]he district court may sustain jurisdiction when an examination of the entire complaint reveals a proper basis for assuming subject matter jurisdiction other than one that has been improperly asserted by the pleader . . .”). Plaintiff's lone and unsubstantiated reference to “federal law” when pleading civil conspiracy is insufficient to trigger original federal question jurisdiction. *See* Fed. R. Civ. Pro. 8.

² Were there room for discretion or considerations of judicial economy, convenience, and fairness to the parties, I would rule that since no scheduling order has been issued, there are no concerns about judicial economy or fairness, I would find no affirmative justification for deciding pendent state law claims, and I would decline to exercise supplemental jurisdiction. *See L-3 Communs. Corp. v. Clevenger*, No. 03-3932, 2004 U.S. Dist. LEXIS 17845, at *20 (E.D. Pa. Aug. 31, 2004).

courts have stated, “supplemental jurisdiction may only be invoked when the district court has a hook of original jurisdiction on which to hang it.” *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001). Here there is no such hook. Plaintiff’s Second Amended Complaint presents no federal law claims and alleges no original federal jurisdiction; it presents only state law claims and alleges only supplemental jurisdiction. I am also guided by the following dichotomy: “[i]f the district court dismisses all federal claims on the merits, it has discretion under § 1367(c) to adjudicate the remaining claims; if the court dismisses for lack of subject matter jurisdiction, it has no discretion and must dismiss all claims.” *Id.* at 806. This case resembles the latter scenario. Defendant Devon Health’s affidavit and Plaintiff’s withdrawal of its RICO claim from the filing of the amended complaint indicate that there is no subject matter jurisdiction. For these reasons, I will dismiss the action.

s/Anita B. Brody

ANITA B. BRODY, J.

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	:	
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ORDER

AND NOW, this 24th day of November, 2010, it is **ORDERED** that Plaintiff's Motion for Leave to File an Amended Complaint (Doc. #28) is **GRANTED**. It is **FURTHER ORDERED** that this action is **DISMISSED** pursuant to Rule 12(h)(3) for lack of subject matter jurisdiction, without prejudice for Plaintiff to pursue state law claims in state court.

s/Anita B. Brody

ANITA B. BRODY, J.