UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* DAVID M. KESTER, STATE OF CALIFORNIA *ex rel.* DAVID M. KESTER, STATE OF COLORADO *ex rel.* DAVID M. KESTER, STATE OF CONNECTICUT *ex rel.* DAVID M. KESTER, STATE OF DELAWARE *ex rel.* DAVID M. KESTER, DISTRICT OF COLUMBIA *ex rel.* DAVID M. KESTER, STATE OF FLORIDA *ex rel.* DAVID M. KESTER, STATE OF GEORGIA *ex rel.* DAVID M. KESTER, STATE OF HAWAII *ex rel.* DAVID M. KESTER, STATE OF ILLINOIS *ex rel.* DAVID M. KESTER, STATE OF INDIANA *ex rel.* DAVID M. KESTER, STATE OF LOUISIANA *ex rel.* DAVID M. KESTER, STATE OF MARYLAND *ex rel.* DAVID M. KESTER, STATE OF MASSACHUSETTS *ex rel.* DAVID M. KESTER, STATE OF MICHIGAN *ex rel.* DAVID M. KESTER, STATE OF MINNESOTA *ex rel.* DAVID M. KESTER, STATE OF MONTANA *ex rel.* DAVID M. KESTER, STATE OF NEVADA *ex rel.* DAVID M. KESTER, STATE OF NEW JERSEY *ex rel.* DAVID M. KESTER, STATE OF NEW MEXICO *ex rel.* DAVID M. KESTER, STATE OF NEW YORK *ex rel.* DAVID M. KESTER, STATE OF NORTH CAROLINA *ex rel.* DAVID M. KESTER, STATE OF OKLAHOMA *ex rel.* DAVID M. KESTER, STATE OF RHODE ISLAND *ex rel.* DAVID M. KESTER, STATE OF TENNESSEE *ex rel.* DAVID M. KESTER, STATE OF TEXAS *ex rel.* DAVID M. KESTER, STATE OF VIRGINIA *ex rel.* DAVID M. KESTER, and STATE OF WISCONSIN *ex rel.* DAVID M. KESTER,

Plaintiffs and Relator,

-against-

NOVARTIS PHARMACEUTICALS CORPORATION, ACCREDO HEALTH GROUP, INC., BIOSCRIP CORPORATION, CURASCRIPT, INC., CVS CAREMARK CORPORATION,

Defendants.

No. 11 Civ. 8196 (CM)

MEMORANDUM DECISION AND ORDER DENYING MOTION TO AMEND

McMahon, J.:

Plaintiff-relator David M. Kester ("Relator") filed a sealed *qui tam* action asserting claims against Novartis Pharmaceuticals Corporation ("Novartis") and several pharmacies including Accredo Health Group, Inc. ("Accredo") under the False Claims Act ("FCA"), 31 U.S.C. § 3729 *et seq.*, and related state laws. Eleven states and the United States government (the "Government") subsequently chose to intervene as co-plaintiffs against Novartis alone. The intervening states include California, Georgia, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Oklahoma, Washington, and Wisconsin. The states of Georgia, Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Oklahoma, and Wisconsin filed a one complaint ("multi-state complaint"), while the states of California and Washington each filed separate complaints against Novartis.

The State of Washington's complaint asserts violations of three sections of the Washington Fraudulent Practices Act, as well as claims for common law fraud, unjust enrichment, money had and received, tortious interference with business expectation, and civil conspiracy.

Before the court is the State of Washington's motion to file an amended complaint under Rule 15(a). Washington seeks to (1) add Accredo as a defendant; and (2) recover from Novartis for damages arising out of its relationship with Accredo.[1] Accredo has filed papers in opposition to the motion, but Novartis has not. For the reasons discussed below, this motion is denied.[2]

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[1] Washington initially sought to replace its unjust enrichment claim with a claim for breach of contract. Washington also seeks to remove its claim for money had and received, which the court previously dismissed. Removing the latter claim is unnecessary. I have already held that Washington may not recover under a money had and received theory.

[2] This opinion is to be referred to in all future correspondence and papers as "*Novartis VIII*."

BACKGROUND

The reader is presumed to be familiar with this Court's previous orders in this case: denying Novartis's motion to dismiss the Government's Complaint pursuant to Rule 9(b), *see U.S. ex rel. Kester v. Novartis Pharm. Corp.*, 23 F. Supp. 3d 242 (S.D.N.Y. 2014) ("*Novartis I*"); granting in part and denying in part Defendants' motions to dismiss the Relator's Second Amended Complaint pursuant to Rule 9(b), *see U.S. ex rel. Kester v. Novartis Pharm. Corp.*, 11 Civ. 8196, 2014 WL 2619014 (S.D.N.Y. June 10, 2014) ("*Novartis II*"); denying the Pharmacy Defendants' motion for reconsideration of this Court's order in *Novartis II* ("*Novartis III*"), *see* Docket #216; granting in part and denying in part Novartis's motion to dismiss the Government's Complaint pursuant to Rules 12(b)(6) and 9(b), *see U.S. ex rel. Kester v. Novartis Pharm. Corp.*, 41 F.Supp.3d 323 (S.D.N.Y. 2014) ("*Novartis IV*"); granting in part and denying in part Defendants' motions to dismiss the Relator's Second Amended Complaint under Rules 12(b)(1), 12(b)(6), and 9(b), *U.S. ex rel. Kester v. Novartis Pharm. Corp.*, 43 F.Supp.3d 332 (S.D.N.Y. 2014) ("*Novartis V*"); granting in part and denying in part Novartis's motion to dismiss the Intervening States' complaints under Rules 12(b)(6) and 9(b), *see U.S. ex rel. Kester v. Novartis Pharm. Corp.*, No. 11 Civ. 8196, 2014 WL 4401275 (S.D.N.Y. Sept. 4, 2014) ("*Novartis VI*"); and granting in part and denying in part and denying the Pharmacy Defendants' motions to dismiss the Relator's Second Amended Complaint under Rules 12(b)(1), 12(b)(6), and 9(b), *U.S. ex rel. Kester v. Novartis Pharm. Corp.*, No. 11 Civ.. 8196, 2015 WL 109934 (S.D.N.Y. Jan. 6, 2015) ("*Novartis VII*").

I. Factual Background

The following facts are drawn from the proposed Amended Complaint ("Compl.") of the State of Washington.

Defendant Novartis is a pharmaceutical company that develops, manufactures, and markets prescription drugs. It sells these drugs through various avenues, including through a network of "specialty pharmacies." In particular, Novartis has used specialty pharmacies to sell Exjade, an iron-reducing drug given to patients who receive blood transfusions. Accredo is one of the specialty pharmacies through which Novartis sells Exjade. According to the complaint, Novartis paid kickbacks to the specialty pharmacies, including Accredo, in exchange for which the pharmacies would pressure patients to continue using Exjade and to refill Exjade prescriptions. (Compl. ¶ 1.)

The kickback scheme originated in early 2007. Novartis's research had revealed that many patients were choosing not to continue to use Exjade due to the drug's side effects. Novartis wanted patients to continue using Exjade and, naturally, fill more Exjade prescriptions. (Compl. ¶ 2.) In February 2007, Novartis developed a "Paying for Performance" system under which Novartis would refer more patients with Exjade prescriptions to participating specialty pharmacies in exchange for those pharmacies' assigning employees to call Exjade patients and encourage those patients to adhere to their Exjade regimen and to refill Exjade prescriptions. (Compl. ¶ 3.) The complaint alleges that the program was not designed for patients' benefits. Instead, pharmacy employees tried to secure additional refills by providing patients with incomplete information and downplaying Exjade's serious side effects. (Compl. ¶¶ 4-5.) Washington specifically alleges that Accredo employees who contacted patients under this scheme were given a script directing them to overemphasize the risks associated with iron overload (which Exjade treats) without mentioning Exjade's side effects. (Compl. ¶¶ 5-6.)

Novartis used the program to promote Exjade sales; Accredo participated to gain additional referrals and thus additional revenue. (Compl. ¶¶ 5, 7.)

Washington reimburses specialty pharmacies for a portion the costs of certain Exjade prescriptions through its Medicaid program, administered through the Washington Single State Agency. (Compl. ¶¶ 25, 27.) Regulations governing the State's Medicaid program prohibit providers from offering remunerations such as kickbacks, bribes, or rebates in exchange for furnishing or recommending Medicaid-reimbursable products. (Compl. ¶ 21.) Specifically, compliance with the Federal Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), is a condition of payment under the state Medicaid program. (Compl. ¶ 17.) Washington also has its own anti-kickback statute, compliance with which is a condition for payment under the state Medicaid program. (compl. ¶ 20.) Furthermore, providers who enroll in the Washington Medicaid program must sign a "core provider agreement" which requires providers to comply with all applicable state and federal rules and regulations, including anti-kickback statutes. (Compl. ¶¶ 33, 35, 49, 50.)

As service providers under the Washington Medicaid program, Accredo and the other specialty pharmacies through which Novartis marketed Exjade all signed core provider agreements and agreed to abide by state and federal regulations governing Medicaid participation. (Compl. ¶¶ 41-44.)

The complaint alleges that the kickback scheme described above – in which Novartis sent more referrals to Accredo in exchange for Accredo pressuring patients to continue using Exjade – violates Washington regulations and Accredo's core provider agreement. According to the complaint, between February 2007 and May 2012, Accredo submitted 84 reimbursement claims to Washington Medicaid for Exjade prescriptions. (Compl. ¶ 52.) Those claims were allegedly tainted by Novartis's pay-for-performance rebates, which are impermissible under Accredo's provider agreement with the State and the applicable Washington Medicaid rules and regulations. (Compl. ¶¶ 51-52.)

II. Procedural Background

This case began when the Relator filed a sealed complaint on November 14, 2011. (Docket #1.) The complaint named as defendants Novartis, Accredo Health Group, Amerisource Bergen Corporation, Bioscrip Corporation, Curascript, Inc., CVS Caremark Corporation, and Express Scripts. Defendant Bioscrip settled with the Relator (and later with the other plaintiffs-intervenors) and is no longer part of the case. (Docket #41, 153, 154.) The claims against Amerisource Bergen, Express Scripts, Medco, and Walgreens have also been dismissed. (Docket ##155, 156.) The Relator is now pursuing claims against Novartis, Accredo, Curascript, and CVS Caremark. The Relator alleges that Novartis orchestrated kickback schemes involving five drugs: Tasigna, TOBI, Gleevac, Myfortic, and Exjade. Each pharmacy defendant is alleged to have participated in a kickback scheme involving at least one of the drugs and the Relator's complaint specifically alleges that Accredo participated in the Exjade scheme.

The relator filed an amended complaint under seal on April 18, 2013. (Docket #12.) Since then, the relator has filed two additional amended complaints, each naming Novartis, Accredo, Curascript, and CVS Caremark as defendants and alleging the existence of kickback schemes involving Tasigna, TOBI, Gleevac, Myfortic, and Exjade. (Docket ##93, 253.)

On April 23, 2013, the United States Government filed a complaint-in-intervention against Novartis only. (Docket #14.) The Government's original complaint asserted only claims relating to the Myfortic scheme, not Exjade or any other drugs. On January 8, 2014, the Government filed an amended complaint in intervention naming Novartis and Bioscrip as defendants.[3] (Docket #62.) The Government's amended complaint added allegations relating to the Exjade kickback scheme but not with respect to Accredo, which is not named in the Government's complaints.

[3] As noted above, Bioscrip has settled and is no longer part of this case.

Also on January 8, 2014, the Relator's amended complaint was unsealed. (Docket #47.) That same day, the State of California filed a complaint in intervention naming Novartis as a defendant. (Docket #60.) California's complaint does not name Accredo as a defendant or contain allegations linking Accredo to any Novartis kickback scheme. Also on January 8, 2014, the intervening states other than Washington and California filed the multi-state complaint-in-intervention naming only Novartis as a defendant. (Docket #61.) Like the California complaint, the multi-state complaint does not contain allegations of misconduct relating to Accredo.

Since January, 2014, the State of California has filed an emended complaint, (Docket #162), as have the nine state parties to the multi-state complaint, (Docket #257), and the United States Government, (Docket #231). Each amended complaint named Novartis as a defendant,[4] but name Accredo as a defendant or allege misconduct concerning Accredo's participation in the Exjade scheme.

On January 27, 2014, the State of Washington filed a complaint-in-intervention naming only Novartis as a defendant. (Docket #82.) The Washington complaint alleged that Novartis participated in a kickback scheme involving Bioscrip but contained no allegations relating to Accredo.

The State of Washington has not, until now, moved to amend its complaint.

The allegations by the various plaintiffs-in-intervention overlap only partially. In particular, only the Relator has alleged kickback schemes involving Gleevac, TOBI, and Tasigna. Thus, the court has directed the parties to proceed on two separate schedules, which will culminate in two separate trials.

[4] As before, the Government named Bioscrip as a defendant, but Bioscrip has settled and is no longer part of this case.

The first schedule is for the "intervened" case. The intervened case concerns only the Exjade scheme alleged in the complaints of the Relator, the Government, and all of the Intervening states, and the Myfortic scheme alleged in the complaints of the Relator and the Government. Accredo is currently involved in the intervened case only through the allegations in the Relator's complaint concerning the Exjade scheme.

The non-intervened case concerns the Gleevac, TOBI, and Tasigna schemes, alleged only in the Relator's complaint.

In September 2014, this court set the schedules for discovery and trial in both the intervened and non-intervened cases. Fact discovery in the intervened case is set to close on April 17, 2015, and expert discovery must be completed by May 29, 2015. (Minute Entry of September 19, 2015.) Thus, the parties must be ready for trial in the intervened case by June 26, 2015. (Minute Entry of September 19, 2015.) The non-intervened has later respective discovery dates and a trial is not anticipated until 2016.

The State of Washington filed this motion to amend its complaint in January 2015, after the court had disposed of a bevy of motions to dismiss.

DISCUSSION

I. Standard

Under FED. R. CIV. P. 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." The Supreme Court has explained that the standard embodied in Rule 15 is a liberal one:

> If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the

> leave sought should, as the rules require, be 'freely given.' *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Although mere delay is usually insufficient to deny leave to amend under Rule 15(a), a lengthy delay without a reasonable explanation justifies denying leave to amend. *Goss v. Revlon, Inc.*, 548 F.2d 405, 407 (2d Cir. 1976); *Barclay v. Deko Lounge*, No. 10-CV-0190, 2014 WL 198317, at *2 (E.D.N.Y. Jan. 14, 2014) (collecting cases); *In re Sept. 11 Litig.*, No. 04 CIV. 7318 (AKH), 2009 WL 3459477, at *2 (S.D.N.Y. Oct. 28, 2009). "Where the plaintiff seeks to amend the complaint after an inordinate delay it bears the burden to explain that delay." *RNB Garments Philippines, Inc. v. Lau*, No. 98 CIV. 4561 (DLC), 1999 WL 796175, at *1 (S.D.N.Y. Oct. 5, 1999) (citing *MacDraw v. CIT Group Equipment Financing*, 157 F.3d 956, 962 (2d Cir.1998)). In particular, courts in this circuit have repeatedly held that district courts may deny leave to amend when the motion is made after other dispositive motions have already been filed and decided. *Cnty. of Washington v. Counties of Warren & Washington Indus. Dev. Agency*, 2 F. App'x 71, 75 (2d Cir. 2001); *Fershtadt v. Verizon Commc'ns Inc.*, 262 F.R.D. 336, 338 (S.D.N.Y. 2009).

More commonly, the critical factor in deciding a Rule 15(a) motion is the existence of prejudice. *AEP Energy Servs. Gas Holding Co. v. Bank of Am.*, N.A., 626 F.3d 699, 725 (2d Cir. 2010) (citing *State Teachers Ret. Bd. v. Fluor Corp.*, 654 F.2d 843, 856 (2d Cir.1981)). "Factors relevant to a showing of prejudice include 'whether the assertion of new claims would: (i) require the opponent to expend significant additional resources to conduct discovery and prepare for trial; (ii) significantly delay the resolution of the dispute; or (iii) prevent the plaintiff from bringing a timely action in another jurisdiction.'" *Zubulake v. UBS Warburg LLC*, 231 F.R.D. 159, 161 (S.D.N.Y. 2005) (quoting *Block v. First Blood Assocs.*, 988 F.2d 344, 350 (2d Cir. 1993)). "One of the most important considerations in determining whether amendment would be prejudicial is the degree to which it would delay the final disposition of the action." *Krumme v. WestPoint*

Stevens Inc., 143 F.3d 71, 88 (2d Cir. 1998) *rev'd sub nom. On other grounds Krumme v. WestPoint Stevens Inc.*, 238 F.3d 133 (2d Cir. 2000) (quoting *H.L. Hayden Co. v. Siemens Medical Systems*, 112 F.R.D. 417, 419 (S.D.N.Y.1986)). Where, however, a party has been particularly dilatory in moving to amend, a lesser showing of prejudice by the non-moving party is required. *Block*, 988 F.2d at 350; *see also Fershtadt*, 262 F.R.D. at 338.

II. The Motion for Leave to File an Amended Complaint Is Denied

A. Washington Delayed Moving for Leave to Amend Without an Adequate Explanation

The State of Washington filed its complaint-in-intervention on January 27, 2014, almost a year to the day before seeking leave to amend, and slightly more than a year after the Relator's complaint – which alleged that Accredo participated in the Exjade kickback scheme – was unsealed. In the intervening year, the other plaintiffs-in-intervention have amended their complaints at least once. Furthermore, the original complaint-in-intervention of the United States was publicly filed on April 23, 2013, almost a year before the Relator's complaint was unsealed.

Washington has failed to provide a defensible explanation for waiting a full year to to amend its complaint.

Washington admits that since the United States' complaint-in-intervention was filed in April 2013, the State has communicated with the United States about Novartis's Exjade kickback scheme and that the United States and Washington have jointly investigated the Exjade scheme. According to the Washington, however, it was not privy to any of the United States' communications with Accredo and thus cannot be charged with knowledge of Accredo's role in the Exjade scheme.

But once Washington learned of the Novartis kickback scheme with Exjade, it had every reason to investigate Novartis's relationship with Accredo either on its own or together with the

United States. Washington was surely able to discern from its Medicaid data in 2013 that Accredo was submitting Exjade claims to the state for reimbursement. After all, Washington incorporated those data into its proposed amended complaint. And Washington obviously knew that Exjade was a Novartis drug. Thus, the State could have surmised that Accredo was involved in the Exjade kickback scheme. Washington could have used the nine months between the United States' filing of its complaint-in-intervention and the filing of Washington's complaint-in-intervention to investigate Accredo and incorporate allegations against it into its original complaint.

Had Washington timely investigated Accredo, on its own or in conjunction with the United States, it would have obtained a number of documents that provide a foundation to assert the various causes of action that the State now seeks to assert against Accredo. In particular, Accredo notes that it produced to the United States protocols – essentially scripts – which outlined the topics which Accredo pharmacists, nurses, and other non-clinical staff were supposed to discuss during calls with patients. Those documents were produced before the United States' complaint-in-intervention was filed. Washington could also have obtained emails (emails Washington in fact incorporates in its proposed amended complaint) in which Accredo personnel emphasize the goal of maximizing "adherence" and increasing Exjade shipments. Both types of documents could suggest the kickback scheme described in Washington's proposed amended complaint.

Even if Washington had no reason to incorporate claims against Accredo in its original complaint, it had ample reason to amend its complaint shortly after the Relator's complaint was unsealed. At that point, Washington was explicitly on notice that the Exjade kickback scheme may have extended to Accredo because those allegations were made by the Relator. Discovery relating to the Exjade scheme, including production by Accredo, began in March 2014. The State acknowledges that it has received documents at some point, but it has not explained why it then

waited until January 2015 to file its motion. That Accredo produced 50,000 documents in total is no excuse – both the Relator and the State should be expected to receive and promptly review large volumes of documents in a complex case such as this one.

Washington advances two arguments justifying its delay in moving to amend its complaint. First, the State asserts that it did not obtain audio recordings of phone calls between Accredo staff and Exjade patients until December 2014, and that those phone recordings "solidifie[d]" the extent of the fraud engaged in by Accredo and Novartis. (Pl. Mem. at 4.) That assertion is irrelevant. Washington does not argue – and indeed could not plausibly argue – that such evidence was *necessary* to file a complaint that would survive a motion to dismiss or satisfy Rule 11. It could not make that argument because the Relator raised substantially the same claims against Accredo that Washington now seeks to raise and did so before those audio recordings were produced. The fact that a party later uncovers additional evidence supporting a theory that it could have raised earlier does not excuse delay in moving to amend. In fact, not only are the recordings unnecessary to support Washington's legal claims, they do not even suggest any facts previously unknown to Washington. The recordings merely confirm what the protocols (scripts) already show: that Accredo representatives communicated with patients and allegedly pressured and misled them into filling additional Exjade prescriptions.

Second, Washington asserts that it properly delayed filing its motion because it did not know whether Accredo's motion to dismiss would be granted (it was ultimately denied in January 2015) and thus did not know in what forum it should assert its claims. This argument is illogical. For one thing, as I noted above, the fact that a party seeks leave to amend after dispositive motions are decided is a reason to *deny* leave to amend, not to grant it. *See Fershtadt*, 262 F.R.D. at 338. In this matter – which has been pending on my docket for over three years – the court has already

issued seven opinions on dispositive motions to dismiss. As noted below, continuing with motions to dismiss will only add time and expense in disposing of this three year old case.

Moreover, waiting to see how Washington and Accredo fared on motions to dismiss served no purpose. If the court had granted Accredo's motion to dismiss then Washington would not have lost anything by moving to amend its complaint. Rather, it could have then brought its state-law claims – assuming those were not dismissed on the merits – in Washington state court. Of course Accredo's motion was ultimately denied. Had Washington moved to amend its complaint before that happened then the sufficiency of the State's new allegations could have been tested earlier by one of the now-decided motions to dismiss. And discovery on those allegations would have been taken in a timely manner. By waiting to raise its allegations against Accredo Washington did nothing but delay the expeditious resolution of this case.

B. Allowing an Amendment Now Would Prejudice Accredo

Accredo would be prejudiced by granting Washington's motion to dismiss. In particular, granting the motion would prolong the disposition of this case and require additional time for discovery. Thus, granting the motion would burden both Novartis and Accredo with added litigation time and expense – well-established forms of prejudice. *Krumme*, 143 F.3d at 88.

First, the resolution of this action would delayed by another round of motion to dismiss briefing. Accredo points to a forum selection clause contained in its Medicaid core provider agreement with Washington, which states, "This Agreement shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County, Washington." (Meron Decl. Ex. E at 1.) Accredo explains that in an unrelated lawsuit, the State of Washington has argued for a broad reading of the forum selection clause as covering not only to allegations that either party breached the agreement itself but to any allegations arising out of the relationship between the parties. Thus, Accredo argues that the forum

selection clause would apply to all of Washington's proposed allegations against it (all of which relate to Accredo's participation in Washington Medicaid) and require dismissal of those allegations in favor of litigation in Washington state courts.

Washington does not dispute that this clause is part of its agreement with Accredo. In fact, in its reply papers, Washington states that it no longer seeks to bring a breach of contract claim against Accredo precisely because of the forum selection clause. But the State offers no reason to doubt Accredo's broader reading of the forum selection clause. Even if Accredo were wrong about the clause, I could not decide that matter now. Rather, it would be the subject of a motion to dismiss which the court would need to decide – a motion that might add extra months to an already three-year-old case.

Washington has no response to this argument. It asserts that any motion to dismiss would simply be a waste of time and redundant with previously filed and decided motions, but that claim is not substantiated. The forum selection clause in Accredo's agreement presents – at the very least – an arguable basis for dismissal that has not been briefed or argued before.

Resolution of this action would also be delayed by the need to take additional discovery if the motion were granted. As Accredo notes, it would be entitled to take discovery on the portion of Washington's Medicaid funds spent reimbursing Exjade prescriptions. Furthermore, Accredo states that under Washington law a plaintiff asserting common-law fraud must show actual and justified reliance on the truth of a defendant's representations. *Stiley v. Block*, 925 P.2d 194, 204 (Wash. 1996). Thus, Accredo would want to take discovery concerning the reimbursement process under Washington Medicaid and concerning any other issues that would bear on the reliance element of Washington's claims.

Washington responds that Accredo would not need to take additional discovery because all the relevant documents and other evidence have already been produced to Novartis. I agree that *some* relevant material has almost certainly been produced to Novartis. In particular, because Washington asserted claims against Novartis concerning Exjade – but only as the Exjade scheme involved Bioscrip – it is possible that Accredo would not need to take significant discovery concerning the general practices of Washington Medicaid. But until now, Washington has not raised any issues regarding Accredo's participation in the Exjade scheme. Nor has the Relator brought claims under Washington's false claims act. Thus, Washington State Medicaid reimbursement with respect to Accredo is not a subject on which – at least as far as the court is aware – any party has yet taken discovery. With discovery set to close very soon, it is unlikely that relevant discovery could be taken by April 17. Thus, to provide Accredo a fair opportunity to defend against Washington's new claims if the motion were granted, the court would have to extend discovery on the intervened case, further delaying these proceedings.

CONCLUSION

For the foregoing reasons, the State of Washington's motion for leave to file an amended complaint-in-intervention is **DENIED**. The Clerk of the Court is directed to remove Docket # 330 from the Court's list of pending motions.

Dated: April 9, 2015

U.S.D.J.

BY ECF TO ALL COUNSEL