

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MARY HILLS, individual and on behalf of
a class of others similarly situated,

Plaintiff,

v.

OPINION AND ORDER

19-cv-907-wmc

ESSENTIA HEALTH,

Defendant/Third-Party Plaintiff,

CIOX HEALTH, LLC,

Third-Party Defendant.

Plaintiff Mary Hills brought this lawsuit on behalf of herself and a class of others similarly situated, alleging that defendant Essentia Health (“Essentia”) overcharged for copies of patients’ health care records in violation of Wis. Stat. § 146.83. Essentia Health has now filed a third-party complaint against Ciox Health, LLC (“Ciox”), asserting that Ciox may be liable for some of plaintiff’s claims against it. For the reasons set forth below, the court will accept defendant’s third-party complaint under Federal Rule of Civil Procedure 14(a)(1).¹

BACKGROUND

Section 146.83 specifies the maximum fees that a health care provider may charge for providing copies of a patient’s health care records. In particular, if the patient or a person authorized by the patient requests the records, the health care provider may not

¹ Defendant Essentia Health has also filed a motion to dismiss, which the court will address in a separate opinion. The court takes up the third-party complaint in this opinion because there is some dispute over whether defendant needs a court order to file the third-party complaint.

charge them a “retrieval” or “certification” fee, although it may charge certain other fees enumerated by the statute, such as shipping costs or specified fees per page. Wis. Stat. § 146.83(3f). Hills alleges that despite authorizing her attorney in writing to request a copy of her medical records, Essentia unlawfully charged a \$15.95 retrieval fee. She also seeks to represent a class of individuals who were similarly charged unlawful fees by Essentia.

Defendant has moved to dismiss plaintiff’s complaint, arguing in part that it is not a “health care provider” under the statute and, therefore, not subject to the statutory fee restrictions. Defendant has also filed a third-party complaint against Ciox, alleging that Essentia contracted with Ciox to process many of the health care records requests at issue. (Third Party Compl. (dkt. #34) 11.) Defendant further alleges that: (1) Essentia gave Ciox the right to retain any fees billed to requesters; and (2) Ciox agreed to bill requesters in compliance with state and federal law. (*Id.*) Based on these allegations, and to the extent that Essentia may be held liable for any unlawful fees charged by Ciox, Essentia brings breach of contract, implied indemnity, equitable indemnity, and contribution claims against Ciox. (*Id.* at 12-16.)²

² In a separate class action, Ciox apparently entered into a settlement agreement to reimburse class members twice the amount of any unlawful fee they paid to Ciox. Essentia argues that persons who have claims based on fees charged by Ciox must be excluded from any putative class here because, once they are fully compensated, they no longer have any injuries stemming from the alleged violation of Wis. Stat. § 146.83. Plaintiff’s counsel, however, raises the possibility that this settlement could be terminated or not performed, and Essentia claims it is necessary to bring this third-party claim to ensure that it doesn’t have to pay for Ciox’s violations. Whatever the merits of this somewhat convoluted background, they are better addressed in motion practice, not in the straightforward question as to whether Essentia may proceed with its third-party complaint against Ciox in this lawsuit under Rule 14.

OPINION

Federal Rule of Civil Procedure 14 provides that:

A defending party may, as third-party plaintiff, serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it. But the third-party plaintiff must, by motion, obtain the court's leave if it files the third-party complaint more than 14 days after serving its original answer.

Fed. R. Civ. P. 14(a)(1). Defendant maintains that leave under Rule 14 is not required because it has yet to serve an answer, but still requests leave to file and serve its third-party complaint “out of an abundance of caution.” (Def.’s Br. (dkt. #35) 1.) Although the court concurs, plaintiff has filed an unprompted brief opposing defendant’s request, which the court will construe as a motion to strike. *See* Wright & Miller, 6 Fed. Prac. & Proc. Civ. § 1443 (3d ed.) (where third party complaint is filed before or within 14 days of defendant’s answer and leave from court is therefore not required, “the case against permitting impleader must be made on a motion to strike the third-party claim”).

Plaintiff contends that defendant’s third-party complaint is not warranted because at this point Mary Hills is the only plaintiff in the case, and her records request was not processed by Ciox. (Pl.’s Opp’n (dkt. #36) 1-2.) According to plaintiff, therefore, Essentia cannot plausibly argue that Ciox may be liable for Hills’ claim as is required under Rule 14. There appears to be no dispute that Hills’ claim was not processed by Ciox, but plaintiff’s complaint purports to bring class claims of those similarly situated. Plaintiff’s opposition to defendant’s third-party complaint might have merit if the class is ultimately defined to exclude any member charged fees by Ciox, but at this point plaintiff does not contest defendant’s allegations that Ciox may be liable for at least some of the class

members' claims. Certainly, a larger question remains as to whether Hills' proposed class will be certified -- just as it is yet to be determined whether Essentia is liable for plaintiff's asserted claims and whether Ciox is liable for some or all of those claims -- but Rule 14 is construed liberally and only requires that the impleaded party "may" be liable "for all or part of the claim" against the defendant. *See Blair v. Cleveland Twist Drill Co.*, 197 F.2d 842, 845 (7th Cir. 1952). Accordingly, defendant's third-party complaint is filed and served brought under Rule 14.

ORDER

IT IS ORDERED that to the extent required, leave is GRANTED to defendant to file and serve its third-party complaint.

Entered this 10th day of June, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge