

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:21-cv-21632-DPG

THI MEDICAL, S.A.C., a Peruvian
company,

Plaintiff,

v.

FILMORE MANAGEMENT TRADING, LLC
a Florida limited liability company, PEDRO R.
AST, an individual, CLAUDIO TORRES, an
individual, and TUV RHEINLAND GROUP,
a German corporation,

Defendants.

**PLAINTIFF’S RESPONSE IN OPPOSITION TO TUV RHEINLAND NORTH
AMERICA, INC.’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Plaintiff, THI Medical, S.A.C. (“Plaintiff”), by and through undersigned counsel, hereby files its Response in Opposition to Defendant, TUV Rheinland of North America, Inc.’s (“TRNA”), Motion to Dismiss Plaintiff’s Complaint (the “Motion”). In support, Plaintiff states:

INTRODUCTION

TRNA is not a party to this lawsuit. Accordingly, it does not have standing to move to dismiss the Complaint. TRNA’s Motion also falls short because it incorrectly posits that (1) TUV Rheinland Group is a “non-legal entity” and thus cannot be sued; and (2) Plaintiff failed to effect proper service of process via the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Convention”). Finally, TRNA failed to identify the (supposedly) proper entity responsible for responding to the Complaint. TRNA’s Motion should be denied.

MEMORANDUM OF LAW

I. STANDARD FOR DISMISSAL

A motion to dismiss filed under Federal Rule of Civil Procedure 12(b)(6) “is not a procedure for resolving a contest between the parties about the facts or the substantive merits of the plaintiff’s case.” *Ventrassist Pty Ltd. v. Heartware, Inc.*, 377 F. Supp. 2d 1278, 1285 (S.D. Fla. 2005) (citation omitted). The motion is, instead, intended merely “to test the formal sufficiency of the statement of the claim for relief” *Id.*

To that end, the Eleventh Circuit has mandated that “courts must be mindful” that “the threshold of sufficiency to which a complaint is held at the motion-to-dismiss stage is exceedingly low.” *U.S. v. Baxter Int’l, Inc.*, 345 F.3d 866, 880-81 (11th Cir. 2003) (citation omitted). “Because the Federal Rules embody the concept of liberalized ‘notice pleading,’ a complaint need contain only a statement calculated to ‘give the defendant fair notice of what the plaintiff’s case is and the grounds upon which its rests.’ ” *Id.* at 881. “[N]otice pleading does not require the pleader to allege a ‘specific fact’ to cover every element or to plead with precision each element of a claim[.]” *Marabella v. NCL (Bahamas), Ltd.*, 437 F. Supp. 3d 1221, 1229 (S.D. Fla. 2020) (citation omitted). Further, this Court has held that, in assessing a Rule “12(b)(6) motion, the Court accepts the factual allegations in the complaint as true and construes them in the light most favorable to the plaintiff.” *Caldwell v. Carnival Corp.*, 944 F. Supp. 2d 1219, 1221 (S.D. Fla. 2013). The “court also considers the facts derived from a complaint’s exhibits as part of the plaintiff’s basic factual averments[.]” Mot. Dismiss Compl. (“Mot.”) [D.E. 20] at 2 (quoting *Reese v. Fed. Emergency Mgmt. Agency*, 2013 WL 12086662, at *2 (S.D. Fla. July 9, 2013)).

In view of the foregoing principles, TRNA’s Motion must be denied.

II. ARGUMENT

A. TRNA Does Not Have Standing to Challenge Plaintiff's Complaint.

TRNA is not named as a defendant in this proceeding. On this basis alone, the Court should deny TRNA's Motion. *Arraiz v. City of Miami Beach*, 05-22045-CIV, 2005 WL 8155285 at *3 (S.D. Fla. Sept. 13, 2005) (denying Beach Frogs Inc.'s motion to dismiss plaintiff's amended complaint because Beach Frogs, Inc. was a non-party); *Dixon v. Bank of Am., N.A.*, 19-80022-CV, 2019 WL 3767097 (S.D. Fla. Aug. 9, 2019) (rejecting Fannie Mae's request to stay discovery because Fannie Mae was a non-party and had no standing to request a stay of discovery); *see also Dolphin v. Waterbury Police Dep't*, 2007 WL 1020741, *1 (D. Conn. March 30, 2007) (denying the City of Waterbury's motion to dismiss pursuant to Rule 12(b)(6) as moot due to court's finding that it was not a party to the lawsuit).

B. Plaintiff Has Properly Named TUV Rheinland Group as a Defendant in this Proceeding.

Notwithstanding TRNA's lack of standing, Plaintiff has properly named TUV Rheinland Group as a defendant in this proceeding. An online search of TUV Rheinland Group yields several results referring to the German entity as "TUV Rheinland Group." In fact, TUV's own website makes a reference to "TUV Rheinland Group" in its "About Us" section. *See* TUV Rheinland Group About Us, attached as Exhibit "A." Moreover, a LinkedIn search of TUV Rheinland Group leads to a LinkedIn page for TUV Rheinland Group with Am Grauen Stein, Cologne, Germany as the primary office location. *See* TUV Rheinland Group LinkedIn page, attached as Exhibit "B." THI references this same address in its Complaint.¹ Finally, a Bloomberg profile refers to TUV Rheinland Group as a "company," at the same address as the one provided in THI's Complaint.

¹ *See* ¶ 9 of Plaintiff's Complaint ("Defendant TUV is a corporation organized and existing under the laws of Germany, with its principal place of business located at Am Grauen Stein Koln, 51105 Germany.").

See Bloomberg Profile for TUV Rheinland Group, attached as Exhibit “C.”

In short, the German entity presents itself to the public as “TUV Rheinland Group” and is properly referred to as such. Taking Plaintiff’s well-pled allegations in the Complaint and simple Google searches of “TUV Rheinland Group,” it is clear that the German entity exists and is therefore on notice of the claims against it. TUV Rheinland Group’s identity is reasonably clear and can be ascertained by sufficient evidence, and a motion to dismiss for suing “a non-legal entity” is improper. *Specialty Nat. Ins. Co. v. U-Save Auto Rental of Am.*, 807-CV-878-T-33MAP, 2009 WL 928040 at *7 (M.D. Fla. Apr. 2, 2009) (holding that a name discrepancy of a corporation was not material because the identity of the corporation could easily be ascertained through public records.).

C. Plaintiff Has Properly Served TUV Rheinland Group Through Its Wholly-Owned Subsidiary, TRNA.

TRNA’s argument that THI has failed to effect proper service of process via the Hague Convention is misplaced. “Where service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the [Hague] Convention has no further implications.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988) (authorizing service of process on American subsidiary on behalf of German parent company where American subsidiary was a wholly-owned, closely-controlled subsidiary, and service was valid under state law). Florida permits substitute service of process on a foreign parent company through its subsidiary company “where there is a showing by plaintiff that the parent corporation exercised such a degree of control over its subsidiary that the activities of the subsidiary were in fact the activities of the parent within the state.” *Sehringer v. Big Lots, Inc.*, 532 F. Supp. 2d 1335, 1342 (M.D. Fla. 2007).

Plaintiff has met that standard. Plaintiff's Complaint alleges sufficient facts to permit service of process on TUV Rheinland Group's North American subsidiary—TRNA. Contrary to the suggestions made in the Motion, the Complaint goes beyond merely asserting that TRNA is a wholly-owned subsidiary of TUV Rheinland Group. Plaintiff alleges that TRNA is responsible for running all of TUV Rheinland Group's North American operations and otherwise acts as TUV Rheinland Group's agent in the United States. Specifically, Paragraph 17 of Plaintiff's Complaint states:

This Court has general personal jurisdiction over TUV under Section 48.193(2), Florida Statutes, through its *wholly-owned North American subsidiary*, TUV Rheinland of North America, Inc. ("TUV America"), *which runs all of TUV's North American operations, inclusive of all operations in the United States*. At all times relevant to this lawsuit, *TUV America was acting as an agent of TUV*. TUV America is registered to do business in Florida, has an office in Florida, and regularly engages in business in Florida. Therefore, TUV, through its subsidiary TUV America, is engaged and/or has engaged in substantial and not isolated activities within Florida.

See Compl. at ¶ 17 (emphasis added).

CONCLUSION

Based on the foregoing points and authorities, Plaintiff, THI Medical, S.A.C., respectfully asks that this Court deny TRNA's Motion.

LOCAL RULE 7.1(a)(3) CERTIFICATION

Undersigned counsel for THI certifies that on June 8, 2021, the undersigned conferred with TRNA's counsel via written correspondence in a good faith effort to resolve the issues raised in TRNA's Motion. As of the filing of this Response, however, TRNA had not responded to THI's communication, necessitating the filing of this Response.

Dated: June 10, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 10, 2021, I electronically filed a true and correct copy of the foregoing document using the Court's CM/ECF system, which will send notification of such filing to all parties listed below:

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