NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NANA AKUA SERWAAH ODDEI, an individual, on behalf of all others similarly situated, Plaintiff-Appellant, v. SCANSTAT TECHNOLOGIES, LLC, a Delaware limited liability company, Defendant-Appellee,	No. 22-55035 D.C. No. 2:21-cv-03974-SB-MRW MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Stanley Blumenfeld, Jr., District Judge, Presiding

Argued and Submitted November 18, 2022
Pasadena, California

Before: NGUYEN and SUNG, Circuit Judges, and FITZWATER,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

Plaintiff-Appellant Nana Akua Serwaah Oddei ("Oddei" or "Appellant") appeals from the district court's grant of judgment on the pleadings in favor of Defendant-Appellee ScanSTAT Technologies, LLC ("ScanSTAT"), against Oddei's claim that ScanSTAT violated California's Confidentiality of Medical Information Act (Cal. Civ. Code §§ 56—56.70) ("CMIA") when it provided copies of her medical records to her counsel. The district court had jurisdiction over Oddei's state law claim under 28 U.S.C. § 1332, and we have jurisdiction under 28 U.S.C. § 1291. We review the district court's grant of judgment on the pleadings *de novo*. *See Rose v. Chase Bank USA, N.A.*, 513 F.3d 1032, 1036 (9th Cir. 2008). We affirm. [1]

1. The district court properly granted ScanSTAT's motion for judgment on the pleadings. "A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law." *Owens v. Kaiser Found. Health Plan, Inc*., 244 F.3d 708, 713 (9th Cir. 2001).

Oddei does not plausibly allege that ScanSTAT is liable under the CMIA. Oddei's FAC does not include any specific factual allegations that would establish ScanSTAT is a "provider of health care" or "contractor" as defined by the statute.

[1] We grant ScanSTAT's request for judicial notice of the authorization materials (Dkt. 15) that were alleged, identified, and made a part of Plaintiff-Appellant's First Amended Complaint ("FAC"), under Fed. R. Evid. 201.

Cal. Civ. Code §§ 56.05(d), 56.06(a)-(b). The CMIA defines "provider of health care" to include a business that provides "software or hardware to consumers. . . in order to make the information available" upon request, Cal. Civ. Code § 56.06(b), or a business organized for the purpose of maintaining medical information," *id.* § 56.06(a). The CMIA defines a "contractor" as "a person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or medical service organization." *Id.* § 56.05(d). Oddei's FAC, however, includes no allegation that ScanSTAT was organized for the purpose of maintaining medical information nor that ScanSTAT qualifies as a contractor. And it includes only the conclusory statement that ScanSTAT provides "software or hardware" for consumers. Conclusory statements are not specific factual allegations that we assume to be true, and such statements, standing alone, do not make the factual showing required under our pleading standards. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003–05 (9th Cir. 2010).

2. The district court did not err when it denied Oddei leave to amend a second time because it deemed further amendment futile. "We review the denial of leave to amend for an abuse of discretion, but we review the question of futility of amendment de novo." *United States v. United Healthcare Ins. Co*., 848 F.3d 1161, 1172 (9th Cir. 2016). The district already granted Oddei leave to amend her

complaint once. Oddei fails to state, in briefing or oral argument, what additional facts she would plead to cure the deficiencies in her FAC, if given leave to amend again. Accordingly, amendment would be futile. *See Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008).

AFFIRMED.