

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 8 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NANA AKUA SERWAAH ODDEI, an individual, on behalf of all others similarly situated,

Plaintiff-Appellant,

v.

OPTUM, INC., a Delaware corporation;
HEALTHCARE PARTNERS MEDICAL GROUP, P.C., a California corporation;
SCANSTAT TECHNOLOGIES, LLC, a Delaware limited liability company, and
DOES 1 through 20 inclusive

Defendants-Appellees,

No. 21-56172

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 the district court’s dismissal of her claims against Defendants-Appellees Optum, Inc., Healthcare Partners Medical Group, P.C. (collectively “Optum”) and ScanSTAT Technologies, LLC (“ScanSTAT”) for overcharging for medical records under California Evidence Code § 1158 (“section 1158”) and California’s unfair competition law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*¹ The district court had jurisdiction over Oddei’s state law claims under 28 U.S.C. § 1332, and we have jurisdiction under 28 U.S.C. § 1291. We review the district court’s decision to grant dismissal *de novo*. See *Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010). We affirm.

1. We have jurisdiction to decide Oddei’s appeal of the dismissal of her claims against ScanSTAT, despite Oddei’s failure to include ScanSTAT in her Notice of Appeal. “[A] mistake in designating the judgment appealed from should not bar appeal as long as the intent to appeal a specific judgment can be fairly inferred and the appellee is not prejudiced by the mistake.” *Ahlmeyer v. Nev. Sys. of Higher Educ.*, 555 F.3d 1051, 1055 (9th Cir. 2009). Oddei’s intent to appeal the dismissal of her claims against ScanSTAT can be fairly inferred based on her subsequent filings, both of which were docketed before the district court’s

¹ Oddei also asserts a claim under California Civil Code § 56 *et seq.* against ScanSTAT. The district court’s dismissal of that claim is the focus of a separate appeal that is not at issue here.

judgment was “entered” under Fed. R. App. P. 4(a)(7). *See McCarthy v. Mayo*, 827 F.2d 1310, 1314 (9th Cir. 1987). And, because ScanSTAT has fully briefed the issues raised by Oddei’s challenge, it suffered no prejudice. *Lockman Found. v. Evangelical All. Mission*, 930 F.2d 764, 772 (9th Cir. 1991).

2. The district court correctly dismissed Oddei’s First Amended Complaint (“FAC”) for failing to allege specific facts sufficient to establish a violation of section 1158 by either Optum or ScanSTAT. A complaint “must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). A claim is facially plausible when the factual content in the complaint “allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

Oddei does not plausibly plead that Optum and ScanSTAT are subject to section 1158’s charging cap, either as “medical provider[s]” or co-conspirators of medical providers. Section 1158 limits the amount that may be charged for medical records when an attorney or their representative “presents a written authorization therefor signed by an adult patient . . . or a copy thereof, *to a medical provider.*” Cal. Evid. Code § 1158(b), (e) (emphasis added). Oddei’s FAC alleges that she

presented her written authorization to Optum.² On appeal, however, Oddei abandons the claim that Optum (or ScanSTAT) is a “medical provider” as that term is defined by section 1158(a).³ Consequently, Oddei fails to allege a required element of a section 1158 claim.

Relying on *Thornburg v. Superior Court*, 41 Cal. Rptr. 3d 156 (Cal. Ct. App. 2006), Oddei alleges a conspiracy between Optum and “53,000 medical providers” operating in California. But as the district court correctly noted, in *Thornburg* the plaintiff satisfied section 1158’s statutory requirements by submitting their record request to a listed “medical provider.” *Id.* at 158.⁴ Further, we do not assume the truth of the FAC’s bare legal conclusion that a conspiracy between Optum and medical providers exists, but instead consider whether the FAC’s well-pleaded facts are sufficient to state a claim. *Telesaurus*, 623 F.3d at 1004–05 (citing *Iqbal*, 556 U.S. at 678). Oddei’s FAC lacks sufficient specific, factual allegations to establish a conspiracy under California law. *See AREI II Cases*, 157 Cal. Rptr. 3d

² Oddei’s FAC does not allege that she provided or attempted to provide her authorization to an individual or entity that is a listed medical provider. Cal. Evid. Code §1158(a).

³ The district court concluded that Optum and ScanSTAT are not “medical providers” under 1158(a). On appeal, Oddei states that this conclusion was error, but does not argue the point, thus waiving it. *See United States v. Kama*, 394 F.3d 1236, 1238 (9th Cir. 2005).

⁴ *Thornburg* also predates amendments that clarified section 1158’s reach and focus on “medical providers.” *See* Cal. Evid. Code. § 1158, *amended by* 2015 Cal. Legis. Serv. Ch. 528 (A.B. 1337).

368, 382 (Cal. Ct. App. 2013) (clarifying the elements that must be pled to make out a conspiracy claim).

3. Because Oddei's UCL claim is derivative of her section 1158 claim, the district court was also correct in dismissing it for failure to state a claim.⁵

AFFIRMED.

⁵ Oddei admits that her UCL claim is derivative of her section 1158 claim. Her acknowledgement comports with California law. *See, e.g., Farmers Ins. Exch. v. Superior Ct.*, 826 P.2d 730, 734 (Cal. 1992).