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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sandrine Mounier, et al.,

10 Plaintiffs,

11 v.

12 RLI Corporation, et al.,

13 Defendants.
14

No. CV-19-01778-PHX-GMS

ORDER

15 Pending before the Court is the Motion to Dismiss of Defendant Four Season Travel,
16 LLC (Doc. 14).¹ For the following reasons the motion is granted.

17 **BACKGROUND**

18 This case is before the Court in diversity jurisdiction, having been removed by the
19 Defendants from the Superior Court for Maricopa County on March 18, 2019. (Doc. 1.)
20 The complaint alleges the following facts, which for purposes of this motion to dismiss are
21 taken as true. Plaintiffs Sandrine and Gustave Mounier are residents of France who decided
22 to visit the American Southwest. As part of their visit, they contracted with Defendant Geo
23 Tours for two tickets on a bus tour of various areas in northern Arizona. Geo Tours, as
24 part of its management of the tour, had an insurance policy that covered the trip. Geo Tours
25 contracted with Defendant Four Season Travel to provide a bus and chauffeur for the trip.
26 Four Season insured the bus with Defendant RLI Corp., and the contract included an
27 underinsured motorist provision (“UIM provision”).

28 ¹ The Reply of Defendant Four Season was untimely filed and was therefore not considered by the Court.

1 the plaintiff pleads factual content that allows the court to draw the reasonable inference
2 that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662,
3 678 (2009) (citing *Twombly*, 550 U.S. at 556). Plausibility requires “more than a sheer
4 possibility that a defendant has acted unlawfully.” *Twombly*, 550 U.S. at 555.

5 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), “[a]ll
6 allegations of material fact are taken as true and construed in the light most favorable to
7 the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However,
8 legal conclusions couched as factual allegations are not given a presumption of
9 truthfulness, and “conclusory allegations of law and unwarranted inferences are not
10 sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.
11 1998).

12 **II. Analysis**

13 **A. The negligence claim is not barred by the statute of limitations.**

14 Four Season argues that the negligence claim is barred by the applicable statute of
15 limitations. Negligence actions in Arizona must be brought within two years of the accrual
16 of the cause of action. *Rowland v. Kellogg Brown and Root, Inc.*, 210 Ariz. 530, 532, 115
17 P.3d 124, 126 (Ariz. Ct. App. 2005) (citing Ariz. Rev. Stat. Ann. § 12-542). The cause of
18 action accrues when “the plaintiff knows or, in the exercise of reasonable diligence should
19 know the facts underlying the cause.” *Tavilla v. Cephalon, Inc.*, 870 F. Supp. 2d 759, 763–
20 64 (D. Ariz. 2012) (citing *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 182
21 Ariz. 586, 588, 898 P.2d 964 (Ariz. 1995)).

22 Four Season asserts that the applicable two-year period in which the Mouniers can
23 bring this negligence action began the night the Mouniers were injured—November 10,
24 2015. However, the complaint does not allege that the negligence claim it brings has
25 anything to do with that incident. Rather, the negligence claim centers on actions taken
26 regarding its insurance claim and related acts. The accrual of the negligence claim is thus,
27 at least at present, a question of fact, and will not result in dismissal of the claim at least at
28 this stage of the case.

1 **B. The complaint fails to state a claim of negligence or punitive damages.**

2 To state a claim for negligence in Arizona, a plaintiff must allege “(1) a duty
3 requiring the defendant to conform to a certain standard of care; (2) a breach by the
4 defendant of that standard; (3) a causal connection between the defendant’s conduct and
5 the resulting injury; and (4) actual damages.” *Gipson v. Kasey*, 214 Ariz. 141, 143, 150
6 P.3d 228, 230 (2007) (en banc).

7 Punitive damages require “something more” than simply demonstrating that a tort
8 occurred. *See Rawlings v. Apodaca*, 151 Ariz. 149, 162, 726 P.2d 565, 478 (1986) (en
9 banc). “The requisite ‘something more,’ or ‘evil mind,’ is established by [clear and
10 convincing] evidence that [the] defendant either (1) intended to injure plaintiff or
11 (2) consciously pursued a course of conduct knowing that it created a substantial risk of
12 significant harm to others.” *Gurule v. Illinois Mut. Life and Cas. Co.*, 152 Ariz. 600, 602,
13 734 P.2d 85, 87 (1987) (en banc).

14 The complaint fails to sufficiently allege a negligence, gross negligence, or punitive
15 damages claim against Four Season. The allegations against Four Season in the complaint
16 are sparse and do not establish that Four Season breached a duty or caused injury to the
17 Mouniers. The complaint alleges that “the manner—willfully, wantonly, consciously,
18 voluntarily, recklessly, maliciously, and/or with an evil mind—in which Defendants
19 handled the Mouniers [sic] insurance claim constitutes a breach of their duties, which
20 amount [sic] to the torts of negligence/gross negligence.” (Doc. 1 at 10.) The complaint
21 also alleges that Four Seasons “adopted unfair, deceptive, and/or unconscionable trade
22 practices(s) [sic] that were pursued with an evil mind and/or in willful, wanton, voluntary,
23 reckless, malicious, and/or conscious disregard of the rights of their offerees/insureds, their
24 covenant of good faith and fair dealing, their duty to provide their offerees/insureds with
25 equal consideration, and the laws of Arizona.” (*Id.*)

26 However, there are no factual allegations which would “allow[] the court to draw
27 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,
28 556 U.S. at 678. There are no allegations establishing that Four Season breached any duty

1 to the Mouniers or that the Mouniers were injured by Four Season’s conduct. The
2 complaint merely alleges that Four Season is a California limited liability company doing
3 business in Arizona; that Geo Tours contracted with Four Season to provide a bus and
4 chauffer for the trip; that Four Season had a UIM policy with RLI; that Four Season knew
5 that its agents would be spending three days chauffeuring tourists around Arizona; that the
6 Mouniers notified Four Season of an insurance claim and asked for copies of the relevant
7 insurance policies; that Four Season turned the claim over to its insurer, RLI; and that
8 ultimately RLI denied the Mouniers’ claim. Those statements, which constitute the entirety
9 of the allegations regarding Four Season in the complaint, do not allege a plausible claim
10 for relief on a negligence theory. Neither do those allegations state a claim for punitive
11 damages.

12 The Mouniers contend that “Four Season’s negligence can be reasonably inferred
13 from the allegations because of their contracts with each of the other defendants.” (Doc.
14 15 at 3.) The Mouniers cite no authority to support that statement, and the Court does not
15 find it persuasive.²

16 **IT IS THEREFORE ORDERED** that the Motion to Dismiss of Defendant Four
17 Season Travel, LLC (Doc. 14) is **GRANTED**, and the claims against it are **dismissed** with
18 **leave to amend**.

19 **IT IS FURTHER ORDERED** that if Plaintiffs elect to file an amended complaint,
20 they shall do so **within thirty (30) days** of the date of this Order.

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28 ² In fact, the Court notes that *both* parties’ briefing on this motion is devoid of citation to legal authority, aside from citations to case law establishing the standard of review for motions to dismiss under Rule 12(b)(6).

