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JS-6

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**BERNARD SINGER, by TAMARA  
SINGER, Guardian Ad Litem,**

**Plaintiff,**

**vs.**

**THE PAUL REVERE LIFE INSURANCE  
COMPANY, THE PRUDENTIAL  
INSURANCE COMPANY OF AMERICA,  
TRUSTEE OF THE AICPA INSURANCE  
TRUST,**

**Defendants.**

**Case No. 2:14-cv-08700-SJO-MRW**

**(Assigned to The Honorable S.  
James Otero Courtroom "1")**

**JUDGMENT IN FAVOR OF  
DEFENDANTS**

1 **JUDGMENT**

2 Plaintiff Bernard Singer (“Plaintiff”) filed this action against The Paul Revere  
3 Life Insurance Company (“Paul Revere”) and The Prudential Insurance Company of  
4 America (“Prudential”) on November 17, 2014. (Docket No. 1) The Complaint  
5 alleged claims for relief for breach of contract, breach of the implied covenant of  
6 good faith and fair dealing (i.e., bad faith) and declaratory relief arising out of  
7 Defendants’ respective denials of Plaintiff’s claim for disability income benefits  
8 under (1) a disability insurance policy that Paul Revere issued to Plaintiff, and (2) a  
9 group disability policy issued by Prudential to JPMorgan Chase Bank, as Trustee of  
10 the American Institute of Certified Public Accountants Insurance Trust, under which  
11 Plaintiff was a participant.

12 **I. PROCEDURAL HISTORY**

13 **A. Dismissal of the original complaint**

14 Paul Revere moved to dismiss Plaintiff’s Complaint on the grounds that his  
15 breach of contract claim was barred by the four-year statute of limitations under  
16 California Code of Civil Procedure Section 337 and that his bad faith claim was  
17 barred by the two-year statute of limitations under California Code of Civil  
18 Procedure Section 339. (Docket No. 12) Paul Revere also asserted that Plaintiff’s  
19 declaratory relief claim was time-barred on the same grounds.<sup>1</sup> *Mangini v. Aerojet-*  
20 *Gen. Corp.*, 230 Cal. App. 3d 1125, 1155 (1991) (“the statute of limitations  
21 governing a request for declaratory relief is the one applicable to an ordinary legal  
22 or equitable action based on the same claim.”) The court granted Paul Revere’s  
23 motion to dismiss, concluding that Plaintiff’s allegations were “too conclusory  
24 plausibly to plead that he was ‘insane.’” (Docket No. 27, p. 8) The Court gave  
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26  
27 <sup>1</sup> Prudential answered Plaintiff’s initial complaint, and asserted the statute of limitations as an affirmative  
28 defense to all claims alleged against Prudential. (Docket No. 10). Specifically, Prudential alleged, *inter alia*, that  
Plaintiff’s claims for breach of contract and declaratory relief were barred by the four-year statute of limitations, and  
that his claim for breach of the covenant of good faith and fair dealing was barred by the applicable two-year statute of  
limitations. (*Id.*, p. 10).

1 Plaintiff leave to amend his Complaint to plead facts demonstrating grounds for  
2 tolling the statute of limitations.

3 **B. Dismissal of the first amended complaint**

4 Plaintiff filed his First Amended Complaint (“FAC”) for breach of contract,  
5 bad faith and declaratory relief on April 7, 2015. (Docket No. 28) Paul Revere and  
6 Prudential moved to dismiss all claims for relief alleged in the FAC based on the  
7 statute of limitations. (Docket Nos. 29 and 34) The Court granted the motions to  
8 dismiss the FAC without prejudice. (Docket No. 50)

9 **C. Dismissal of the second amended complaint**

10 Plaintiff filed his Second Amended Complaint (“SAC”) for breach of  
11 contract, bad faith and declaratory relief on September 4, 2015. (Docket No. 56)  
12 Paul Revere and Prudential again moved to dismiss all claims for relief alleged in  
13 the SAC based on the statute of limitations. (Docket Nos. 57 and 58) The Court  
14 granted the motions to dismiss the SAC without prejudice. (Docket No. 72)

15 **D. Dismissal of the third amended complaint**

16 Plaintiff filed his Third Amended Complaint (“TAC”) for breach of contract,  
17 bad faith and declaratory relief on December 31, 2015. (Docket No. 75) Paul  
18 Revere and Prudential again filed motions to dismiss on the grounds that all of  
19 Plaintiff’s claims for relief were time barred. (Docket Nos. 80 and 81) With respect  
20 to Paul Revere, Plaintiff’s claims were time barred because Paul Revere  
21 unequivocally denied Plaintiff’s claim for disability income benefits on June 1,  
22 2009, thereby triggering the accrual of the statute of limitations on each of  
23 Plaintiff’s claims. Plaintiff waited more than four years after June 1, 2009 – until  
24 November 17, 2014 – before filing this action. With respect to Prudential,  
25 Plaintiff’s claims were time barred because Prudential unequivocally denied  
26 Plaintiff’s claim for disability benefits on August 13, 2010, thereby triggering the  
27 accrual of the statute of limitations on each of Plaintiff’s claims alleged against  
28

1 Prudential. Plaintiff waited more than four years after August 13, 2010 before filing  
2 this action on November 17, 2014.

3 In the TAC, Plaintiff alleged that the statute of limitations should be tolled  
4 because he had been insane at all relevant times. Plaintiff alleged that at the time of  
5 trial, he would present testimony from his physicians and/or expert witnesses who  
6 would corroborate Plaintiff's claimed insanity for the entire relevant period.  
7 Plaintiff also alleged that his mental condition had not changed since May 2008.

8 The Court granted Defendants' motions to dismiss the TAC without  
9 prejudice, concluding that Plaintiff's allegation that other physicians would  
10 corroborate his claim of insanity at the time of trial merely indicated a possibility of  
11 pleading plausible allegations in the future.

12 Additionally, with respect to Plaintiff's allegations regarding his mental  
13 condition in 2008 (that Plaintiff had difficulty concentrating and recalling  
14 information, had continuing symptoms, was restricted from doing calculations and  
15 could only do limited reading), the Court explained that it had already determined  
16 that the substance of those allegations was too conclusory and insufficient to  
17 demonstrate grounds for tolling based on insanity. (Docket No. 91, p. 7)

18 **II. PLAINTIFF WAS GIVEN LEAVE TO FILE A FOURTH AMENDED**  
19 **COMPLAINT, BUT CHOSE NOT TO DO SO**

20 When it granted Defendants' motions to dismiss the TAC, the Court gave  
21 Plaintiff leave to file a Fourth Amended Complaint by March 8, 2016. (Docket No.  
22 91, p. 8) However, Plaintiff did not file a Fourth Amended Complaint by that  
23 deadline, and instead filed an ex parte application on March 8, 2016, requesting that  
24 the Court give him additional time, until March 23, 2016, to file a Fourth Amended  
25 Complaint. (Docket No. 92)

26 The Court granted Plaintiff's ex parte request and extended his deadline to  
27 file a Fourth Amended Complaint to March 23, 2016. (Docket No. 96) However,  
28 Plaintiff did not file a Fourth Amended Complaint by March 23, 2016. The Court

1 then issued an Order to Show Cause for Plaintiff to explain, in writing by April 1,  
2 2016, why the Court should not dismiss the case for lack of prosecution. (Docket  
3 No. 97)

4 Plaintiff's counsel filed a declaration in response to the Order to Show Cause  
5 on April 1, 2016, in which he stated that Plaintiff "elected not to file a Fourth  
6 Amended Complaint," and instead elected to "stand on the Third Amended  
7 Complaint." (Docket No. 98).

8 On April 29, 2016, the Court entered orders granting Paul Revere's and  
9 Prudential's motions to dismiss Plaintiff's TAC with prejudice. (Docket Nos. 103  
10 and 104).

11 In light of the foregoing, **IT IS HEREBY ORDERED, ADJUDGED AND**  
12 **DECREED AS FOLLOWS:**

- 13 1. Plaintiff's claims for relief against Paul Revere and Prudential for  
14 declaratory relief, bad faith, and breach of contract are barred by the statute of  
15 limitations under California Code of Civil Procedure Sections 337 and 339 and are  
16 dismissed with prejudice;
- 17 2. That judgment is entered in favor of Paul Revere and Prudential and  
18 against Plaintiff;
- 19 3. That Plaintiff shall take nothing by way of his Third Amended  
20 Complaint;
- 21 4. That Paul Revere and Prudential shall be entitled to recover from  
22 Plaintiff their costs of suit; and
- 23 5. That this case is dismissed with prejudice.

24  
25 **IT IS SO ORDERED.**

26  
27 DATED: May 23, 2016

*S. James Otero*  
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The Honorable S. James Otero  
United States District Judge