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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IV SOLUTIONS, INC., Plaintiff, v. UNITED HEALTHCARE, Defendants.	Case No. CV 15-01418 DDP (SSx) **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS** [Dkt. No. 15]

Presently before the Court is Defendant's motion to dismiss Plaintiff's First Amended Complaint ("FAC"). (Dkt. No. 15.) Having heard oral arguments and considered the parties' submissions, the Court adopts the following order.

I. BACKGROUND

Plaintiff is a supplier of a "blood product called intravenous immune globulin ('IVIG')." (FAC, ¶¶ 9-10, 14-15.) Plaintiff alleges it supplied IVIG to a patient referred to as "M.O." from January to July 2006. (Id. at ¶ 9.) Plaintiff further alleges that M.O. was at all times insured by Defendant "and/or" another company called "HealthNet." (Id.) Plaintiff alleges, and provides an exhibit to show, that it had previously entered into a contract with a company called "Coalition America," which it alleges was

"acting as United's designated contracting agent," to be paid for its services at a certain rate. (Id. at ¶¶ 8, 31; Id., Ex. A.) That rate, as specified in the document attached to Plaintiff's FAC, was to be the "lesser of 70% billed charges or usual, customary, and reasonable charges." (Id., Ex. A.) Plaintiff alleges it provided services to M.O. under initial authorization from insurer HealthNet, only to later be told by HealthNet that in fact M.O.'s correct insurer was Defendant United Healthcare. (Id. at ¶¶ 16-19.) Plaintiff alleges that on March 24, 2006, Defendant authorized IVIG for M.O.[1] and "agreed that IV Solutions would be paid its total billed charges." (Id. at ¶¶ 20-23.) Plaintiff alleges that it "timely submitted its total billed charge claims" to Defendant. (Id. at ¶ 24.)

Plaintiff alleges that Defendant failed to timely pay the amount owed, instead paying only what it "unilaterally" defined as the "usual and customary" rates, based on "geographic profiling" and pricing data from its Ingenix pricing service. (Id. at ¶¶ 25-26, 32.)

Plaintiff alleges that Defendant has "issued many written explanations and made many verbal statements" regarding the amount it was willing to pay, but that these were misrepresentations and/or stalling tactics. (Id. at ¶ 34.) Plaintiff alleges that although Defendant issued "explanations of benefits" and "other writings explaining and attempting to justify its processing of payments" between July 2006 and April 2011, "[t]o date, United has

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[1]Plaintiff alleges it memorialized these authorizations in writing at the time; however, those memorializations are not attached to the FAC. (FAC, ¶ 21.)

not issued a complete, full and final denial, or complete explanation" of its position on the claims.

Plaintiff filed this lawsuit in state court in January 2015; it was removed to federal court in February 2015. (Dkt. No. 2.) Defendant moves to dismiss based on statute of limitations, failure to allege the existence of a contract, breach, or damages, and failure to state a claim based on an open book account. (Dkt. No. 15.)

II. LEGAL STANDARD

In order to survive a motion to dismiss for failure to state a claim, a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 55 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint must include "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) (quoting Twombly, 550 U.S. at 570). When considering a Rule 12(b)(6) motion, a court must "accept as true all allegations of material fact and must construe those facts in the light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).

III. DISCUSSION

A. Statute of Limitations

Plaintiff's claims are subject to statutes of limitations as follows:

- Claims for breach of contract and open book account must be filed within four years of the time of accrual.[2] Cal. Civ. Proc. Code § 337(1)-(2).

- Claims for breach of implied contract, breach of the covenant of good faith and fair dealing, and negligent misrepresentation must be filed within two years of the time of accrual. Cal. Civ. Proc. Code § 339(1); Love v. Fire Ins. Exch., 221 Cal. App. 3d 1136, 1144 n.4 (1990); E-Fab, Inc. v. Accountants, Inc. Servs., 153 Cal. App. 4th 1308, 1316 (2007).

- Claims for fraud, including intentional misrepresentation, must be filed within three years of the time of accrual. Cal. Civ. Proc. Code § 338(d).

Plaintiff alleges that Defendant made misrepresentations, but not later than April 2011. Thus, the claims for intentional and negligent misrepresentation are time-barred.

A cause of action for an open book account accrues on "the date of the last entry in the book account." In re Roberts Farms Inc., 980 F.2d 1248, 1253 (9th Cir. 1992). Plaintiff alleges that

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[2]Defendant argues that the claim for an open book account is subject to a two-year statute of limitations to the degree that it is premised on exactly the same facts as a breach of implied contract, citing Filmservice Labs., Inc. v. Harvey Bernhard Enterprises, Inc., 208 Cal. App. 3d 1297, 1307 (1989). But the holding in Filmservice is likely a narrow one, applying only to circumstances where the allegation of an "open book account" is simply a naked attempt to recharacterize an oral agreement as a book account to get around the statutory time bar. Id. at 1307. ("[N]o facts have been alleged which give rise to any reasonable inference that the oral contract was superseded by an open book account or account stated agreement. The mere existence of two invoices ... do not evidence such accounts. Those invoices simply memorialize the oral contract."). In any event, as will be discussed below, whether the statute of limitations is two years or four years, the date of accrual is early enough that Plaintiff's claim cannot survive.

it has maintained its book account "in the regular course of business", (FAC, ¶ 68), and that it provided its final service to the patient M.O. on "about July 7, 2006." (Id. at ¶ 9.) Plaintiff also alleges that "[a]fter providing the authorized services to M.O., IV Solutions timely submitted its total billed charges for payment" to Defendant. (Id. at ¶ 24.) Thus, the final entry in the book account was presumably made some time shortly after the provision of the final treatment to M.O. Because that final entry would have occurred many years before January 2011, the statute of limitations has run, and the claim is time-barred.

As to the other claims, the time of accrual of the cause of action is the time when Defendant's payment in full was due. "A cause of action for breach of contract accrues at the time of breach, which then starts the limitations period running." Cochran v. Cochran, 56 Cal. App. 4th 1115, 1120 (1997). It is well-established that where a contract does not specify a time for performance, the party is obliged to perform within a reasonable time, and the statute of limitations begins to run when a "reasonable time" has expired without performance. Cal. Civ. Code § 1657; Caner v. Owners' Realty Co., 33 Cal. App. 479, 481 (1917). Although "[w]hat constitutes a 'reasonable time' for performance is a question of fact," Consol. World Investments, Inc. v. Lido Preferred Ltd., 9 Cal. App. 4th 373, 381 (1992), Plaintiff has pled no facts plausibly suggesting that delaying payment for four-and-a-half years after the initial demand was made would have been reasonable.[3] Thus, payment due under a contract, whether express

[3] "[D]etermining whether a complaint states a plausible claim (continued...)

or implied, would have been due some time before (probably well before) January 2011, let alone January 2013. Thus, Plaintiff's claims for breach of contract (whether express or implied), filed in January 2015, are time-barred absent equitable tolling, discussed below.

B. Equitable Tolling

Plaintiff argues that the statutes of limitations should be subject to equitable tolling, because Defendant has never issued an unequivocal denial of the claim. Defendant, however, argues that Plaintiff's own pleadings show that it has.

Plaintiff relies on Prudential-LMI Com. Ins. v. Superior Court, which held that the 12-month statute of limitations imposed on claims arising under statutorily-defined fire insurance policies should be equitably tolled from the time the insured submitted a claim to the insurer to the time the insurer issued a final decision on the claim. 51 Cal. 3d 674, 687-93 (1990). The Court reasoned that equitable tolling "allows the claims process to function effectively, instead of requiring the insured to file suit before the claim has been investigated and determined by the insurer, and that "it protects the reasonable expectations of the insured by requiring the insurer to investigate the claim without later invoking a technical rule that often results in an unfair forfeiture of policy benefits." Id. at 692.

However, the Prudential-LMI court specifically limited its holding to "the first party progressive property loss cases in the

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[3](...continued)
is context-specific, requiring the reviewing court to draw on its experience and common sense." Ashcroft v. Iqbal, 556 U.S. 662, 663-64 (2009).

context of a homeowner's insurance policy." Id. at 679. It also explicitly rested its decision on the fact that the 12-month limitations period in the statutorily-mandated property loss contracts was considerably shorter than the period for breach of contract claims in other contexts. Id. at 691. Finally, in Prudential-LMI, the plaintiff was an insured, suing its insurer on an insurance policy. The court ruled on the provisions of the Insurance Code, a body of law specifically designed to protected insured parties. Id. at 687-93 (citing and interpreting Cal. Ins. Code § 2071).

Here, Plaintiff sues for payment under an ordinary contract, and the concerns embodied in Prudential-LMI do not apply, or at any rate apply with less force. Once a reasonable time for payment had passed, either Defendant was in breach (if it paid less than the amount owed under the contract) or it was not. If Plaintiff believed it was owed more, it could have sued right away; Defendant's alleged statements as to how much it was obligated to pay, and the allegedly "partial" payments it made, did not affect Plaintiff's right to sue.

Plaintiff also argues for either tolling, waiver, or estoppel because it "reasonably relied on United's conduct and was induced by United to believe the possibility of an amicable settlement could be reached." (Opp'n at 7.) But the mere possibility of settlement, or ongoing efforts to settle, do not toll the statute of limitations – especially where the limitations period is lengthy

enough to allow for attempts at settlement prior within the period.[4]

Even if bad faith in negotiations to resolve the problem could result in waiver or estoppel, Plaintiff does not allege that Defendant made misrepresentations that would have induced Plaintiff to give up its right to sue because an amicable settlement was close at hand. Indeed, Plaintiff does not allege that Defendant offered the possibility of settlement at all. At most, Plaintiff alleges that Defendant made misrepresentations about its claims process in order to stonewall. (FAC, ¶ 34.)

Finally, if Plaintiff wanted to negotiate in good faith to come to an amicable settlement, but did not want to give up its right to sue, it could always have approached Defendant with a tolling agreement, effectively stopping the clock on the statute by agreement. See, e.g., Britz Fertilizers, Inc. v. Nationwide Agribusiness Ins. Co., No. 1:10-CV-02051-AWI, 2013 WL 5519605, at *18-19 (E.D. Cal. Oct. 3, 2013) (statute of limitations on contract claim not time-barred due, in part, to tolling agreement). The parties here are sophisticated businesses with access to counsel,

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[4]See Transport Ins. Co. v. TIG Ins. Co., 202 Cal. App. 4th 984 (2012) (expressing doubt that equitable tolling could apply to a contract claim, "in light of the lengthy statute of limitations involved"); Lantzy v. Centex Homes, 31 Cal. 4th 363, 380, 73 P.3d 517, 530 (2003) ("Because plaintiffs had three or four years after discovery, and up to ten years after the project's completion, to bring their suits for latent construction defects, many of the concerns that might warrant equitable tolling are ameliorated. Indeed, were we to conclude that the generous limitations period of section 337.15 is equitably tolled for repairs, despite the absence of any specific indication that the 1971 Legislature so intended, the implication would arise that all statutes of limitations are similarly tolled or suspended in progress while the parties make sincere efforts to adjust their differences short of litigation. We find no such general principle in California law.").

and such an agreement was within their reach. (If Defendant was not willing to enter into such an agreement, of course, that would have been a strong indication that it was not interested in reaching an amicable settlement.)

Plaintiff's facts, even if taken as true, do not plausibly suggest grounds for equitable tolling or other equitable relief from the statute of limitations.

C. Other Arguments

Because the claims in the FAC are time-barred, the Court does not consider other arguments raised by the parties in this motion.

IV. CONCLUSION

Plaintiff's First Amended Complaint is hereby DISMISSED.

IT IS SO ORDERED.

Dated: July 7, 2015

DEAN D. PREGERSON
United States District Judge