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**United States District Court
Central District of California**

LOVADA WORKMAN,

Plaintiff,

v.

DEARBORN NATIONAL LIFE
INSURANCE COMPANY,

Defendant.

Case No 2:17-CV-04515-ODW (SSx)

**ORDER DENYING DEFENDANT’S
MOTION TO DISMISS [14]**

I. INTRODUCTION

Lovada Workman brings this Complaint to recover unpaid interest on a life insurance policy (the “Policy”) that was issued by Defendant Dearborn National Life Insurance Company. (*See generally* First Am. Compl. (“FAC”), ECF No. 12.) Workman alleges claims against Dearborn for: 1) breach of fiduciary duty and equitable relief under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a); and 2) unjust enrichment. (*Id.*) Workman claims that California Insurance Code § 10172.5 required Dearborn to pay interest on her ex-husband’s death benefit from the date of his death, as opposed to the date she made her claim on the Policy. (*Id.*)

1 Dearborn moves to dismiss the FAC because: 1) ERISA preempts the
2 application of California Insurance Code § 10172.5 and Workman’s unjust enrichment
3 claim; and 2) the Policy does not provide for the payment of interest.¹

4 II. FACTUAL BACKGROUND²

5 Workman’s ex-husband, John Borum, was covered by a life insurance policy
6 issued by Dearborn, and through his employer. (FAC ¶¶ 4–5.) Workman was the sole
7 designated beneficiary of the life insurance coverage. (*Id.* ¶ 5.)

8 On May 14, 2002, Borum stopped working due to a disability, and paid his last
9 premium payment on June 1, 2002. (*Id.* ¶ 7.) On June 30, 2002, he died. (*Id.*)
10 Workman maintains that Borum was covered by the Policy, and paid his premiums
11 until he died. (*Id.*)

12 Fourteen years later, in 2016, Workman first learned of her ex-husband’s death.
13 (*Id.* ¶ 6.) She contacted his employer regarding the life insurance coverage, and then
14 submitted a claim to Dearborn in June 2016. (*Id.* ¶¶ 6, 14.) Dearborn denied the
15 claim, and asserted “untimely filing and a lack of coverage due to nonpayment of
16 premiums.” (*Id.* ¶ 11.) Workman then retained counsel who wrote to Dearborn
17 requesting a copy of the claim file, and plan documents. (*Id.* ¶ 12.)

18 Dearborn acknowledged receipt of the letter on February 1, 2017, but did not
19 produce the documents. (*Id.*) On February 27, 2017, Dearborn overturned its denial
20 without ever having received a formal appeal request from Workman’s counsel. (*Id.*
21 ¶ 13.) Dearborn paid Workman \$37,179.91, which included the \$37,000 policy
22 benefit, and \$179.91 in interest. (*Id.* ¶¶ 13–14.) The interest was calculated at an
23 undisclosed rate, and beginning on June 1, 2016—the date Workman provided proof
24

25 ¹ After considering the papers filed in connection with the Motion, the Court deemed the matter
26 appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. L.R. 7-15. The
27 Court considers Workman’s Opposition despite its late filing. The parties filed a stipulation in
28 advance of the due date, which requested to move the hearing date to accommodate counsel’s
observance of religious holidays. (Stip., ECF No. 15.)

² All factual references are allegations taken from Workman’s Complaint and accepted as true for
purposes of this Motion. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 of Borum’s death. (*Id.*) Workman then appealed the decision not to provide interest
2 from the date of Borum’s death, as she claims is required by California Insurance
3 Code § 10172.5. (*Id.* ¶¶ 15–18.) Dearborn denied Workman’s appeal, so she filed
4 this lawsuit.

5 III. LEGAL STANDARD

6 A motion to dismiss under either Rule 12(c) or 12(b)(6) is proper where the
7 plaintiff fails to allege a cognizable legal theory or where there is an absence of
8 sufficient facts alleged under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*,
9 550 U.S. 544, 555 (2007); *see also Shroyer v. New Cingular Wireless Serv., Inc.*, 622
10 F.3d 1035, 1041 (9th Cir. 2010). That is, the complaint must “contain sufficient
11 factual matter, accepted as true, to state a claim to relief that is plausible on its face.”
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

13 IV. DISCUSSION

14 A. ERISA Preemption

15 ERISA preempts “any and all State laws in so far as they may now or hereafter
16 relate to any employee benefit plan.” 29 U.S.C. § 1144(a); *see also Metro. Life Ins.*
17 *Co. v. Mass.*, 471 U.S. 724, 733 (1985) (discussing that § 514(a) of ERISA broadly
18 preempts state laws that relate to an employee benefit plan). However, any state law
19 that “regulates insurance, banking, or securities” is exempted from preemption (the
20 “saving clause”). 29 U.S.C. § 1144(b)(2)(A).

21 In *Kentucky Association of Health Plans, Inc. v. Miller*, the Supreme Court
22 explained that a state law “regulates insurance,” within the meaning of ERISA’s
23 savings clause, if it: 1) is “specifically directed toward entities engaged in insurance;”
24 and 2) “substantially affect[s] the risk pooling arrangement between the insurer and
25 the insured.” 538 U.S. 329, 341–42 (2003) (citations omitted).

26 Workman relies on California Insurance Code § 10172.5(a)³, which provides:

27
28 ³ In her briefing, Workman refers to “§ 10172.6,” which the Court construes as a typographical error,
as this section does not exist, and Workman refers to § 10172.5 in her FAC. The Court also notes

1 each insurer admitted to transact life insurance, credit life
2 insurance, or accidental death insurance in this state that
3 fails or refuses to pay the proceeds of, or payments under,
4 any policy of life insurance issued by it within 30 days after
5 the date of death of the insured shall pay interest, at a rate
6 not less than the then current rate of interest on death
7 proceeds left on deposit with the insurer computed from the
8 date of the insured's death, on any moneys payable and
9 unpaid after the expiration of the 30-day period.

10 Dearborn contends ERISA preempts this section, but does not specifically address
11 whether this code section is “specifically directed toward entities engaged in
12 insurance.” *Kentucky Ass’n*, 538 U.S. at 341–42. The Court finds this statute is
13 directed at insurance providers because it adds substantive provisions to insurance
14 policies that might not otherwise be included in the policy. *See Standard Ins. Co. v.*
15 *Morrison*, 584 F.3d 837, 842 (9th Cir. 2009) (citing *Kentucky Ass’n*, 538 U.S. at 337)
16 (“It is well-established that a law which regulates what terms insurance companies can
17 place in their policies regulates insurance companies.”). Furthermore, it directly
18 defines, and identifies insurers “admitted to transact life insurance, credit life
19 insurance, or accidental death insurance...,” and there is no indication it has
20 application to other industries. Cal. Ins. Code § 10172.5(a). There can be no doubt
21 that this statute is directed at insurers.

22 For the same reasons, this statute affects the risk allocated between insurer and
23 insured. The statute requires insurers to pay interest on death benefits to the extent
24 they “fail or refuse” to pay them within “30 days after the date of death of the
25 insured....” *Id.* (“shall pay interest....”). Thus, it modifies the amount of the benefit
26 paid to the insured, and changes the allocation of risk. *Id.*; *see also Franklin H.*
27 *Williams Ins. Trust v. Travelers Ins. Co.*, 50 F.3d 144, 151 (2d Cir. 1995) (citing
28 *United States Dep’t of Treasury v. Fabe*, 508 U.S. 491, 502–03 (1993)) (“The date

that a prior version of this statute was in effect before 2004. Whether this has any effect on Workman’s claim is for another day.

1 that interest accrues impacts to some degree upon a transfer of risk from the insured to
2 the insurer, by varying the amount paid to the insured upon the occurrence of the
3 insured event or condition.”).

4 Dearborn relies on *Manabat v. Metropolitan Life Ins. Co.*, No. CV 12–252–
5 RSWL (MANx), 2013 WL 1899123 (C.D. Cal. May 3, 2013), to argue that ERISA
6 preempts the California Insurance Code in this instance. (Mot. 7, ECF No. 14.)
7 There, on a motion for attorneys’ fees, costs, and interest, the court declined to award
8 the plaintiff prejudgment interest pursuant to California Insurance Code § 10172.5
9 because ERISA preempted it. *Id.* at *2. However, the court did not address the two-
10 part test established by the Supreme Court in *Kentucky Association*. In fact, the court
11 did not mention ERISA’s savings clause at all. *See generally Manabat*, 2013 WL
12 1899123, at *2. Instead, it relied on general language discussing ERISA’s preemptive
13 effect on additional remedies not provided for in the legislative scheme. *See id.*

14 As urged by Workman, *Manabat* is not controlling, and did not adequately
15 address whether California Insurance Code § 10172.5 falls within ERISA’s savings
16 clause. Furthermore, while decided before *Kentucky Association*, the Second Circuit
17 held that ERISA does not preempt a state statute requiring insurers to pay interest to
18 insureds on a death benefit from the date of the insured’s death. *Franklin H. Williams*
19 *Ins. Trust*, 50 F.3d at 151 (citing *Metro. Life Ins. Co.*, 471 U.S. at 151) (holding New
20 York statute requiring interest on death benefit to be “precisely the type of statute that
21 Congress intended to save from ERISA preemption.”). The reasoning of *Franklin* is
22 persuasive, and coincides with the Supreme Court’s framework for deciding whether a
23 state law “regulates insurance,” and thus escapes preemption. *See Kentucky Ass’n*,
24 538 U.S. at 341–42. Accordingly, the Court **DENIES** Dearborn’s Motion on
25 preemption grounds.

26 As for Workman’s unjust enrichment claim, Dearborn admits that the Ninth
27 Circuit allows a district court to award prejudgment interest in ERISA cases. *Shaw v.*
28 *Int’l Ass’n of Machinists and Aerospace Workers Pension Plan*, 750 F.2d 1458, 1465

1 (9th Cir. 1985) (“Whether interest will be awarded is a question of fairness, lying
2 within the court’s sound discretion, to be answered by balancing the equities.”). Thus,
3 while a claim for something more than prejudgment interest employing an unjust
4 enrichment theory might be preempted, what Workman seeks here is not. For the
5 reasons above, Workman’s unjust enrichment claim is not preempted, and the Court
6 can only balance the equities after the development of a factual record. Accordingly,
7 the Court **DENIES** Dearborn’s Motion to dismiss the unjust enrichment claim.

8 **B. The Policy Language**

9 Dearborn devotes three paragraphs to argue that the Policy does not provide for
10 interest payments, and therefore they are not recoverable, despite California Insurance
11 Code § 10172.5. (Mot. 8–9.) Dearborn does not provide any legal authority for this
12 proposition, and Workman does not rebut this argument in her briefing. In light of the
13 Court’s discretion to award prejudgment interest in an ERISA action, *Shaw*, 720 F.2d
14 at 1465, the Court declines to dismiss Workman’s FAC on these grounds.

15 **V. CONCLUSION**

16 For the reasons discussed above, the Court **DENIES** Workman’s Motion to
17 Dismiss. After developing a factual record, the reasons for Workman’s 14-year delay
18 in discovering her ex-husband’s death will hopefully be apparent. Whether those
19 circumstances will affect any recovery, remains to be seen.

20
21 **IT IS SO ORDERED.**

22
23 February 5, 2018

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**