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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ACF WESTERN USA, Inc.,

CASE NO. 1:12-cv-00182-LJO-BAM

Plaintiff,

ORDER ON MOTION TO STRIKE (Doc. 7)

vs.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA,

Defendant.

I. INTRODUCTION

Plaintiff ACF Western USA, Inc. (“ACF”) alleges that Travelers Property Casualty Company of America (“Travelers”) breached its insurance policy and the implied covenant of good faith and fair dealing. In the instant motion, Travelers seeks to strike the references to Cal. Ins. Code § 790.03 and its attendant regulations from paragraphs 20 and 25 of the complaint. ACF does not oppose the motion. For the reasons discussed below, this Court GRANTS in part and DENIES in part Travelers’ motion to strike.

II. BACKGROUND

A. Facts¹

ACF owns a commercial property insured by Travelers. (Doc. 1, p. 9, ¶ 5). On or about July 14,

¹ The background facts are derived from the complaint.

1 2010, ACF's roof collapsed causing major damage to the property. (Doc. 1, p. 10, ¶ 11). After the roof
2 collapsed, ACF filed a timely insurance claim with Travelers. (Doc. 1, p. 9, ¶ 5, 10). ACF alleges that
3 Travelers was obligated to conduct a fair and thorough investigation of the damage and promptly pay
4 ACF the benefits of the insurance policy. (Doc. 1, p. 10, ¶ 12). Instead, the insurance claim was
5 assigned to staff adjusters for Travelers who set an inspection but the claim was ultimately adjusted by
6 a consultant engaged in the general business of structural engineering. (Doc. 1, p. 10-11, ¶ 13). The
7 consultant was purportedly hired to determine the cause of loss however, ACF alleges that the
8 consultant's true objective was to provide a self-serving and biased conclusion regarding the cause of
9 loss so that Travelers could deny ACF's claim. (Doc. 1, p. 11, ¶ 14). ACF alleges that the consultant,
10 with the consent and approval of Travelers, adopted a methodology and practice to superficially
11 investigate ACF's claim and misapplied structural engineering codes and standards. (Doc. 1, p. 11, ¶
12 15). ACF further alleges that the consultant produced a conclusory and self serving report which
13 Travelers relied upon in denying ACF's claim. (Doc. 1, p. 11, ¶ 16).

14 **B. Procedural History**

15 On December 15, 2011, ACF commenced the instant action in Fresno County Superior Court
16 against defendants Travelers Casualty Insurance Company of America ("Travelers Casualty"), Travelers
17 Commercial Insurance Company ("Travelers Commercial"), Travelers Property Casualty Company of
18 America ("Travelers") erroneously sued as Travelers Property Casualty Insurance Company, and Does
19 1 through 100. (Doc. 1, p. 8). The complaint alleged three claims for relief against all defendants: (1)
20 breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) unfair
21 competition, in violation Cal. Bus. & Prof. Code § 17200, et seq. (Doc. 1, p. 8). On February 8, 2012,
22 defendants removed the action to this Court on the basis of diversity jurisdiction. (Doc. 1).

23 On February 16, 2012, defendants filed a motion to dismiss Travelers Casualty and Travelers
24 Commercial from the complaint and ACF's third cause of action for unfair competition, pursuant to Fed.
25 R. Civ. P. 12(b)(6). (Doc. 7). Defendants also filed a motion to strike the references to Cal. Ins. Code
26 § 790.03 and its attendant regulations from paragraphs 20, 25, and 36 of the complaint, pursuant to Fed.
27 R. Civ. P. 12(f). (Doc. 7). ACF did not oppose either motion. On March 20, 2012, the parties filed a
28 joint stipulation in which they agreed to dismiss from the complaint with prejudice Travelers Casualty,

1 Travelers Commercial, and Travelers Property Casualty Insurance Company. (Doc. 8). The parties also
2 agreed to dismiss with prejudice ACF’s third cause of action for unfair competition. (Doc. 8). In the
3 parties’ stipulation, they did not address the motion to strike. (Doc. 7). Accordingly, this Court signed
4 the stipulated order (Doc. 11) and issued an order to show cause why defendant Travelers’s motion to
5 strike should not be granted in light of the parties’ stipulation (Doc. 10). ACF did not respond to the
6 order to show cause. Having considered the arguments at issue and the relevant law, this Court issues
7 this order.

8 III. DISCUSSION

9 A. Motion to Strike Legal Standard

10 Federal Rule of Civil Procedure 12(f) permits the Court to “strike from a pleading an insufficient
11 defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f).
12 Immaterial matter is “that which has no essential or important relationship to the claim for relief or the
13 defenses being pleaded.” *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993) (internal
14 quotation marks and citations omitted), *rev’d on other grounds*, 510 U.S. 517, 114 S. Ct. 1023, 127 L.
15 Ed. 2d 455 (1994). Impertinent matter “consists of statements that do not pertain, and are not necessary,
16 to the issues in question.” *Id.*

17 The function of a Fed. R. Civ. P. 12(f) motion is “to avoid the expenditure of time and money
18 that must arise from litigating spurious issues by dispensing with those issues prior to trial.”
19 *Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). “Motions to strike are
20 generally regarded with disfavor because of the limited importance of pleading in federal practice, and
21 because they are often used as a delaying tactic.” *California Dept. of Toxic Substances Control v. Alco*
22 *Pacific, Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002); *see also Neveu v. City of Fresno*, 392 F.
23 Supp. 2d 1159, 1170 (E.D. Cal. 2005) (Motions to strike are generally disfavored and “should not be
24 granted unless it is clear that the matter to be stricken could have no possible bearing on the subject
25 matter of the litigation.”).

26 B. Motion to Strike Arguments

27 Travelers seeks to strike the references to Cal. Ins. Code § 790.03 (“section 790.03”) and its
28

1 attendant regulations in paragraphs 20 and 25 of the complaint.² Travelers argues that the references to
2 section 790.03 and its attendant regulations are immaterial, impertinent, and prejudicial³ because
3 California law does not permit a private cause of action against an insurer for violations of section
4 790.03 or its attendant regulations.

5 **1. Paragraph 20**

6 In the preliminary allegations section of ACF’s complaint it alleges that, “Defendants’ conduct
7 in denying the rightful insurance claim of Plaintiff was fraudulent, malicious and oppressive . . . in
8 disregard for their duties under the law, including the mandates of *California Insurance Code*
9 *Section 790.03 and California Code of Regulations, Title 10, Chapter 5 . . .*” (Doc. 1, p. 12).

10 There is no private right of action under section 790.03. *Moradi-Shalal v. Fireman’s Fund Ins.*
11 *Co.*, 46 Cal. 3d 287, 304 (1988). Similarly, there is no private right of action under section 790.03’s
12 attendant regulations. *See Rattan v. United Servs. Auto. Ass’n*, 84 Cal. App. 4th 715, 724 (2001)
13 (“neither the Insurance Code nor regulations adopted under its authority provide a private right of
14 action”); *see also City of Hollister v. Monterey Ins. Co.*, 165 Cal. App. 4th 455, 488 (2008) (noting that
15 “violations of the fair claims practices regulations do not give rise to a private right of action”); *Raisin*
16 *Bargaining Ass’n v. Hartford Cas. Ins. Co.*, 715 F. Supp. 2d 1079, 1091 (E.D. Cal. 2010) (stating
17 “California law does not provide a private right of action for violations of [Cal. Ins. Code § 790.03] or
18 the attendant regulations”). Likewise, ACF does not allege a cause of action under section 790.03 or its
19 attendant regulations. Thus, the allegation that Travelers disregarded their duties under section 790.03
20 and its attendant regulations has no important relationship nor does it pertain to ACF’s breach of contract
21 or bad faith claims. *See Fogerty*, 984 F.2d at 1527 (immaterial matter is that which has no important
22 relationship to the claim being pleaded, impertinent matter are statements that do not pertain to the issues

23 ² Travelers also seeks to strike portions of paragraph 36. Paragraph 36 is part of ACF’s third cause of action for
24 unfair competition. Because the parties agreed to dismiss ACF’s third cause of action, there is no need to address this
25 argument.

26 ³ Travelers’ contention that the references should be stricken because they are prejudicial is irrelevant. In the Ninth
27 Circuit a showing of prejudice is not required when requesting a motion to strike. Matters can be properly stricken although
28 they are not shown to be prejudicial. *See Fogerty*, 984 F.2d at 1528 (recognizing that a district court could properly grant
a motion to strike “for the purpose of streamlining the ultimate resolution of the action and focusing the jury’s attention on
the real issues in the case”).

1 in question).

2 Accordingly, this Court GRANTS Travelers' motion to strike the reference to section 790.03 and
3 its attendant regulations from paragraph 20.

4 **2. Paragraph 25**

5 Paragraph 25 is part of ACF's breach of contract claim (first cause of action). The paragraph
6 alleges as follows:

7 25. Defendants additionally breached Insurance Policies and their respective
8 duties of care in various manners, inclusive of failure to:

- 9 a. Adopt and implement reasonable standards for the prompt,
10 thorough and accurate investigation and processing of Insurance
11 Claims;
12 b. accurately represent to Plaintiff the applicable coverages for a
13 roof collapse under the Insurance Policy;
14 c. disclose the standard of care in the business of insurance for
15 adjustment of claims in relation to such a loss;
16 d. attempt in good faith to effectuate prompt, fair, complete and
17 equitable settlement of Insurance Claims;
18 e. make coverage and loss valuation decisions and determinations
19 with the benefit of unbiased and/or qualified professionals;
20 f. comply with the applicable provisions of California law,
21 including *Insurance Code* Section 790.03;
22 g. produce "claim related documents" in accordance with
23 *Insurance Code* Section 2071;
24 h. comply with provisions of *California Code of Regulations*,
25 including, but not limited to, Title 10, Chapter 5, Section
26 2695.7;
27 I. produce policies procedures and protocols of Defendants;
28 j. properly and accurately direct Plaintiff about to the applicable
provisions of Insurance Policies;
k. implement a fair and reasonable standard of practice regarding
adjustment of this loss;
l. place Plaintiff on notice of the tolling period for its claim and
the times within which statutes of limitation on Insurance
Claims would expire;
m. comply with Defendants' express representation to Plaintiff as
follows - "(a) Every insurer shall disclose to a first party
claimant, all benefits, coverage, time limits or other provisions
of any insurance policy issued by that insurer that may apply to
the claim presented by first party claimant;"
n. investigate or even question the accuracy of the report from
Defendants' Hired Consultant, holding, in essence, that this was
not a covered loss;
o. produce records supportive of communications by and between
Defendants and Hired Consultant;
p. be truthful regarding results of Defendants' investigation of
Insurance Claim;
q. be truthful regarding Defendants' conduct, such as - "Please
accept our assurances that we have given due consideration for

1 this claim”;
2 r. be truthful regarding Defendants’ objectives and
3 misrepresentation of facts - “In regard to your assumption that
4 **Additional Coverage D. Collapse** applies to this loss, we must
inform you that your assumptions are incorrect. This building
has not collapsed and is not in a state of imminent collapse.”

5 Travelers seeks to strike the allegations in subsections (a), (d), (f), (h), (j), (k), and (l) because
6 they are either near verbatim recitations of section 790.03, directly reference section 790.03 or its
7 attendant regulations, or rephrase portions of section 790.03. Travelers argues that these references are
8 immaterial and impertinent. This Court agrees.

9 Subsection (a) is a near verbatim recitation of section 790.03(h)(3). Subsection (d) is a near
10 verbatim recitation of section 790.03(h)(5) while subsection (f) directly alleges that Travelers failed to
11 comply with section 790.03. Similarly, subsection (h)² alleges that Travelers failed to comply with
12 CCR § 2695.7, one of section 790.03's attendant regulations. Subsection (j) essentially rephrases section
13 790.03(h)(13)’s requirement that insurance companies provide the basis relied on in the insurance policy
14 for the denial of a claim. Also, subsection (k) rephrases section 790.03(h)(3)’s requirement that
15 insurance companies “adopt and implement reasonable standards for the prompt investigation and
16 processing of claims.” Finally, subsection (l) rephrases section 790.03(h)(15)’s prohibition against
17 “[m]isleading a claimant as to the applicable statute of limitations.”

18 As discussed above, there is no private right of action under section 790.03, *Moradi-Shalal*, 46
19 Cal. 3d at 304, or its attendant regulations, *see Raisin Bargaining Ass’n*, 715 F. Supp. 2d at 1091.
20 Likewise, ACF does not allege a cause of action under section 790.03 or its attendant regulations. Thus,
21 whether Travelers failed to comply with the various duties codified in section 790.03 or its attendant
22 regulations has no important relationship nor does it pertain to ACF’s breach of contract claim. *See*
23 *Fogerty*, 984 F.2d at 1527.

24 Accordingly, this Court GRANTS Travelers’ motion to strike subsections (a), (d), (f), (h), (j),
25 (k), and (l) from paragraph 25.

26
27 ² Travelers actually argues that subsection (i) alleges a violation of 10 CCR § 2695.7. Because subsection (h), and
28 not subsection (i), alleges a violation of 10 CCR § 2695.7, this Court construes Travelers’ argument as relating to subsection
(h).

1 Travelers also seeks to strike subsections (b) and (m) through (r) from paragraph 25. Travelers
2 argues that these subsections essentially rephrase violations of section 790.03 or its attendant regulations
3 and are thus, immaterial and impertinent. The Court finds that subsections (b) and (m) through (r) are
4 not restatements of section 790.03 or its attendant regulations. The Court further finds that these
5 allegations are not immaterial or impertinent because they relate directly to ACF's breach of contract
6 claim. Subsection (b) alleges that Travelers failed to fully and accurately disclose coverage under the
7 policy. Subsections (m), (q) and (r) allege that Travelers failed to comply or failed to be truthful
8 regarding specific quoted material which appears to be from the parties' contract or relates to other
9 representations Travelers made to ACF. In addition, the allegations in subsections (n) and (o) relate
10 directly to the investigative report prepared by the consultant hired by Travelers. Finally, subsection (p)
11 relates directly to Travelers investigation of ACF's claim.

12 Accordingly, this Court DENIES Travelers' motion to strike subsections (b) and (m) through (r)
13 from paragraph 25.

14 IV. CONCLUSION AND ORDER

15 For the reasons discussed above, Travelers' motion to strike is GRANTED in part and DENIED
16 in part as follows:

- 17 1. Travelers' motion to strike "*California Insurance Code* Section 790.03 and *California*
18 *Code of Regulations, Title 10, Chapter 5*" from paragraph 20 of ACF's complaint is
19 GRANTED;
- 20 2. Travelers' motion to strike subsections (a), (d), (f), (h), (j), (k), and (l) from paragraph
21 25 of ACF's complaint is GRANTED; and
- 22 3. Travelers' motion to strike subsections (b), (m), (n), (o), (p), (q), and (r) from paragraph
23 25 of ACF's complaint is DENIED.

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27 IT IS SO ORDERED.

28 **Dated:** March 28, 2012

/s/ Lawrence J. O'Neill

UNITED STATES DISTRICT JUDGE

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