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

KARIMA K. ALI,	)	CASE NO. 1:12-CV-00509-AWI-
	)	GSA
Plaintiff,	)	ORDER DENYING
	)	DEFENDANT HUMANA
v.	)	INC.'S MOTION TO DISMISS
	)	FIRST AND SECOND CAUSES
HUMANA INC.,	)	OF ACTION IN PLAINTIFF'S
	)	THIRD AMENDED
Defendant.	)	COMPLAINT
	)	[DOCUMENT NO. 30]

I. INTRODUCTION

Defendant, Humana Inc., (hereinafter referred to as "Defendant") has filed a motion to dismiss the first and second causes of action in the third amended complaint of Plaintiff, Karima K. Ali (hereinafter referred to as "Plaintiff") pursuant to Federal Rule of Civil Procedure 12(b)(6). For the reasons discussed below, the motion to dismiss shall be denied.

II. FACTS AND PROCEDURAL BACKGROUND

The court refers the parties to previous orders for a complete chronology of the proceedings. On October 22, 2012, Plaintiff filed her third amended complaint (TAC) against Defendant alleging (1) breach of written contract, (2) conversion, (3) defamation, and (4) negligence. On November 5, 2012, Defendant filed a motion to dismiss the first and second causes of action for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

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III. LEGAL STANDARD

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Where the plaintiff fails to allege “enough facts to state a claim to relief that is plausible on its face,” the complaint may be dismissed for failure to allege facts sufficient to state a claim upon which relief may be granted. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007). “A claim has facial plausibility,” and thus survives a motion to dismiss, “when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Determining whether a complaint will survive a motion to dismiss for failure to state a claim is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” (*Id.* at 664-665). On a Rule 12(b)(6) motion to dismiss, the court accepts all material facts alleged in the complaint as true and construes them in the light most favorable to the plaintiff. *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005).

IV. DISCUSSION

A. Breach of Written Contract

In California, the elements of a cause of action for breach of contract are (1) the existence of a contract, (2) the plaintiff’s performance or excuse for nonperformance, (3) the defendant’s breach and (4) resulting damages to the plaintiff. *Oasis West Realty, LLC v. Goldman*, 51 Cal.4th 811, 821, 124 Cal.Rptr.3d 256, 250 P.3d 1115 (2011). “If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference.” *Harris v. Rudin, Richman & Appel*, 74 Cal.App.4th 299, 307, 87 Cal.Rptr.2d 822 (1999).

Plaintiff’s TAC alleges that she and Defendant “entered into an agreement that Plaintiff will receive \$100 for every enrollment her agents submit,” that Plaintiff “performed all conditions, Covenants, [sic] and promises required by it on its part to be performed in accordance

1 with the terms and condition of the contract,” that Plaintiff’s “Agents [sic] submitted 400
2 Enrolment [sic] for 2011 Annual Enrollment Period which started on Nov. 1, 2010 and ended
3 Dec. 31, 2010,” that “Plaintiff earned \$40,000.00 Commission [sic] according to the verbal and
4 written agreement,” and that “Defendant did not pay the amount on 2011 and 2012,” amounting
5 to damages of \$80,000 for the years 2011 and 2012, and \$33,000 in penalties incurred from the
6 California Department of Labor Commission. Plaintiff attached the contract as Appendix I, but
7 as Defendant points out, the terms of compensation between the parties are set out in a collateral
8 contract titled Producer Partnership Plan, which is not attached.

9 Defendant argues that Plaintiff has failed to sufficiently allege a cause of action for
10 breach of contract because she failed to attach a copy of the Producer Partnership Plan or the
11 terms and rules of the Medicare referral fee program. Mot. to Dismiss at 6-7. Defendant further
12 claims that Plaintiff’s failure to attach either of these documents or allege their terms renders her
13 claim insufficient. However, contrary to Defendant’s argument, federal procedural rules do not
14 require that the contract at issue be attached to the complaint. *Downtown Plaza LLC v. Nail Trix,*
15 *Inc.*, 2008 WL 5099656 at *1 (E.D.Cal.2008).

16 In this case, Plaintiff has alleged the material terms and conditions of an agreement that
17 she entered into with Defendant, in which Defendant was to pay \$100 for every enrollment
18 Plaintiff’s agents submitted, that Plaintiff’s agents submitted \$40,000 worth of enrollments in
19 both 2011 and 2012 in accordance with the terms of the agreement, that Defendant breached the
20 agreement by not paying, and that Plaintiff has suffered damages as a result of this breach
21 amounting to the \$80,000 Defendant did not pay and an additional \$33,000 in penalties incurred
22 from the California Department of Labor Commission because Plaintiff was unable to meet her
23 payroll obligations as a result of Defendant’s failure to hold up its end of the agreement. These
24 allegations are sufficient to plead a breach of contract.

25 **B. Conversion**

26 In California, the elements of conversion are “(1) the plaintiff’s ownership or right to
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