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3 **UNITED STATES DISTRICT COURT**
4 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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6 **GUSTAVO SANCHEZ AGUILAR,**
7 **Plaintiff,**
8 **v.**
9 **APPLIED UNDERWRITERS, INC.,**
10 **Defendant.**

1:17-CV-01692-LJO-SAB

**MEMORANDUM DECISION AND
ORDER GRANTING DEFENDANT'S
UNOPPOSED MOTION TO DISMISS
(ECF No. 5)**

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13 **I. INTRODUCTION**

14 Plaintiff, Gustavo Sanchez Aguilar, also known as Gustavo Lopez Diaz (“Plaintiff”), brings this
15 lawsuit against Applied Underwriters, Inc. (“Defendant”). Plaintiff alleges that Defendant failed to
16 continue providing insurance benefits after May 1, 2008, (ECF No. 1-1 at 66), for an injury Plaintiff
17 suffered on or about July 17, 2006, while working for Precision Drywall as a drywall installer. (ECF
18 No. 1-1 at 11, 20).

19 Plaintiff filed his initial complaint on November 1, 2017 in the Superior Court of California,
20 County of Fresno. (ECF No. 1-1 at 5). Plaintiff filed an Amended Complaint on November 3, 2017.
21 (ECF No. 1-1 at 12). Defendant timely removed the complaint to this Court on December 13, 2017,
22 pursuant to 28 U.S.C. §§ 1441 and 1446(b). The Court has jurisdiction under 28 U.S.C. § 1332(a), as
23 the parties are of diverse citizenship, and Plaintiff’s claim(s), which involve hospital bills and lost wages
24 potentially dating back to 2006, meet the \$75,000 amount in controversy requirement. (ECF No. 1 at
25 1). Now before the Court is Defendant’s unopposed motion to dismiss pursuant to Fed. R. Civ. P. 8(a)

1 and 12(b)(6) for failure to state a claim for relief that is plausible on its face. (ECF No. 5 at 1-3). For
2 the reasons discussed below, this Court GRANTS WITHOUT LEAVE TO AMEND Defendant's
3 motion to dismiss.

4 **II. BACKGROUND**

5 The following facts are drawn from the complaint and the materials submitted with the
6 complaint. *United States v. Corinthian Colleges*, 655 F.3d 984, 998-99 (9th Cir. 2011). ("As a general
7 rule, [a court] 'may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion'
8 . . . [a court] may, however, consider materials that are submitted with and attached to the complaint.")
9 (internal citations omitted). Plaintiff was injured while employed by Precision Drywall on or about July
10 17, 2006. (ECF No. 1-1 at 11). Precision Drywall had workers' compensation insurance coverage,
11 known as the ("Voluntary Plan"), through Allied Underwriters, Inc. which paid insurance benefits to
12 Plaintiff after his injury. (ECF No. 1-1 at 66). On May 1, 2008, Defendant sent a letter to Plaintiff
13 informing him that he had "reached [his] maximum benefit entitlement under the Voluntary Plan." *Id.*

14 Plaintiff appealed the denial of additional benefits to the California Worker' Compensation
15 Appeals Board and Unemployment Insurance Appeals Board ("CUIAB") without success. On October
16 10, 2017, the CUIAB sent a letter to Plaintiff informing him that their decision was final and that any
17 additional review of the case was only possible through judicial review of the decision under California
18 Code of Civil Procedure § 1094.5. (ECF No. 1-1 at 22). On November 3, 2017, Plaintiff filed an
19 amended complaint in the Fresno County Superior Court alleging that on or about July 17, 2006, a
20 written and oral agreement was made between Defendant and Plaintiff, and that Defendant breached the
21 agreement on the same date when "the insurance [Applied Underwriters Inc.] stopped paying my
22 hospital[] bills halfway through and [I] lost wages." (ECF No. 1-1 at 12, 16). Attached to his complaint
23 are a number of exhibits. (ECF No. 1-1 at 20-69.)

24 **III. STANDARD OF DECISION**

25 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) challenges the legal

1 sufficiency of the opposing party's pleadings. Dismissal of an action under Rule 12(b)(6) is proper
2 where there is either a “lack of a cognizable legal theory or the absence of sufficient facts alleged under
3 a cognizable legal theory.” *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). When
4 considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), all allegations of
5 material fact must be accepted as true and construed in the light most favorable to the pleading party.
6 *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996). The inquiry is generally limited to
7 the allegations made in the complaint. *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir.
8 2008).

9 Federal Rule of Civil Procedure 8(a)(2) “requires only ‘a short and plain statement of the claim
10 showing that the pleader is entitled to relief’ in order to ‘give the defendant fair notice of what the . . .
11 claim is and the grounds upon which it rests.’ ” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
12 (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). To overcome a Rule 12(b)(6) challenge, the
13 complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*,
14 550 U.S. at 570. A claim is plausible on its face when “the plaintiff pleads factual content that allows
15 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
16 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plausible claim is one which provides more than “a sheer
17 possibility that a defendant has acted unlawfully.” *Id.* A claim which is possible, but which is not
18 supported by enough facts to “nudge [it] across the line from conceivable to plausible . . . must be
19 dismissed.” *Twombly*, 550 U.S. at 570.

20 A complaint facing a Rule 12(b)(6) challenge “does not need detailed factual allegations, [but] a
21 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
22 conclusions, and a formulaic recitation of the element of a cause of action will not do.” *Id.* at 555
23 (internal citations omitted). In essence, “a complaint . . . must contain either direct or inferential
24 allegations respecting all the material elements necessary to sustain recovery under *some* viable legal
25 theory.” *Id.* at 562. To the extent that any defect in the pleadings can be cured by the allegation of

1 additional facts, the plaintiff should be afforded leave to amend, unless the pleading “could not possibly
2 be cured by the allegation of other facts.” *Cook, Perkiss and Liehe, Inc. v. N. Cal. Collection Serv. Inc.*,
3 911 F.2d 242, 247 (9th Cir. 1990).

4 **IV. ANALYSIS**

5 **A. The Complaint Fails to State a Claim for Relief that is Plausible On Its Face**

6 A pro se plaintiff must satisfy the pleading requirements of Federal Rule of Civil Procedure 8(a).
7 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a
8 complaint, or portion thereof, must be dismissed if it fails to set forth “enough facts to state a claim to
9 relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; *see also* Fed. R. Civ. P. 12(b)(6).
10 Dismissal is thus appropriate based either on the “lack of a cognizable legal theory or the absence of
11 sufficient facts alleged under a cognizable legal theory.” *Balistreri*, 901 F.2d at 699.

12 Review of Plaintiff’s complaint reveals that it fails to allege a cognizable legal theory, or facts
13 supporting a cognizable legal theory. As noted above, the Plaintiff’s only allegation is that on or about
14 July 17, 2006, “the insurance [Applied Underwriters Inc.] stopped paying my hospital[] bills halfway
15 through and I lost wages.” (ECF No. 1-1 at 16). Construing the complaint liberally, Plaintiff could
16 possibly be alleging either, or both, a cause of action for judicial review of the CUIAB’s decision on his
17 workers’ compensation/disability benefits claim, or for breach of contract.

18 **1. Judicial Review of CUIAB’s Decision**

19 To the extent that Plaintiff is alleging a cause of action for judicial review of the CUIAB
20 decision, Plaintiff has not alleged this claim with the minimal detail required by Fed. R. Civ. P. 8(a) to
21 survive a Fed. R. Civ. P. 12(b)(6) motion to dismiss. Pursuant to the CUIAB letter dated October 10,
22 2017, Plaintiff appears to have exhausted his administrative remedies and has been directed to seek
23 additional review through the courts. (ECF No. 1-1 at 22). However, judicial review of CUIAB
24 administrative decisions is necessarily limited. “The inquiry in such a case shall extend to the questions
25 whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair

1 trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the
2 respondent has not proceeded in the manner required by law, the order or decision is not supported by
3 the finding, or the findings are not supported by the evidence.” Cal. Civ. Proc. Code § 1094.5(b)
4 (emphasis added). When reviewing an administrative decision, a court must exercise its “independent
5 judgment” on the evidence in the administrative record, *see e.g., Macgregor v. Unemployment Ins.*
6 *Appeals Bd.*, 37 Cal. 3d 205, 211-12 (1984), but nevertheless must “afford a strong presumption of
7 correctness concerning the administrative findings, and the party challenging the administrative decision
8 bears the burden of convincing the court that the administrative findings are contrary to the weight of the
9 evidence.” *Fukuda v. City of Angels*, 20 Cal. 4th 805, 817 (1999). The agency’s conclusions will be
10 upheld if they are supported by “substantial evidence.” *Macgregor*, 37 Cal. 3d at 212.

11 Here, Plaintiff has failed to allege facts that would allow a court to find that CUIAB’s decision to
12 deny Plaintiff additional worker’s compensation benefits exceeded CUIAB’s jurisdiction, that CUIAB
13 has not proceeded in the manner required by law, or that CUIAB’s decision was an abuse of discretion.
14 *See* Cal. Civ. Proc. Code § 1094.5(b).

15 **2. Plaintiff’s Claim for Breach of Contract**

16 To the extent that Plaintiff is alleging a cause of action for breach of contract, Plaintiff has failed
17 to state adequate facts to support a cognizable claim. “Pursuant to California law, to state a claim for
18 breach of contract, the plaintiff must allege []: (1) the existence of a contract, (2) plaintiff’s performance
19 or excuse for nonperformance, (3) defendant’s breach, and (4) damages to plaintiff as a result of
20 defendant’s breach.” *Merced Irr. Dist. v. Cnty. of Mariposa*, 941 F. Supp. 2d 1237, 1270 (E.D. Cal.
21 2013) (citing *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal. App. 4th
22 435, 463 (2010)). Even construing the complaint liberally, the only fact Plaintiff alleges is that the
23 insurance stopped paying his hospital bills. (ECF No. 1-1 at 16). Plaintiff has not alleged the existence
24 of any contract between himself and Defendant, the terms of any contract between himself and
25 Defendant, any alternative means by which he could be considered a third-party beneficiary of a

1 contract, or how Defendant breached any such contract.

2 Additionally, California applies a four-year statute of limitations to claims based on written
3 contracts. *See* Cal. Civ. Proc. Code § 337. In this case, Plaintiff's complaint was filed more than nine
4 years after being notified on May 1, 2008 that his maximum benefit entitlement under the Voluntary
5 Plan had been reached. (ECF No. 1-1 at 66). Because almost six years have passed since the statute of
6 limitations was reached on May 1, 2012, Plaintiff's claim is barred.

7 **V. CONCLUSION AND ORDER**

8 For the reasons set forth above, all of Plaintiffs' potential claims fail as matter of law. The
9 Complaint in its current form does nothing more than allege that Defendant stopped paying insurance
10 money to Plaintiff. This claim is both insufficient to allege a claim for relief and is barred by
11 California's statute of limitations. Furthermore, the Court cannot find, in the absence of opposition
12 detailing what additional facts could be plead, that allowing for leave to amend would be anything but
13 futile. *See Martinez v. Wells Fargo Bank, N.A.*, CASE NO. 5:13-cv-05597 EJD, 2014 WL 1572689, at
14 *4 (N.D. Cal. Apr. 17, 2014). Accordingly, the Court GRANTS Defendant's motion to dismiss
15 WITHOUT LEAVE TO AMEND. The Clerk of Court is directed to CLOSE THIS CASE.

16
17 IT IS SO ORDERED.

18 Dated: March 2, 2018

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE