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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JESUS DUARTE,

No. 2:09-CV-01623-FCD-EFB

Plaintiff,

v.

MEMORANDUM AND ORDER

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, and DOES 1
through 100, inclusive,

Defendants.

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This matter is before the court on defendant State Farm Mutual Automobile Insurance Company's ("State Farm" or "defendant") motion to strike portions of plaintiff Jesus Duarte's ("Duarte or "plaintiff") complaint pursuant to Federal Rule of Civil Procedure 12(f). Plaintiffs oppose the motions. For the reasons set forth below,¹ defendant's motion to strike is DENIED.

¹ Because oral argument will not be of material assistance, the court orders this matter submitted on the briefs. E.D. Cal. L.R. 78-230(h).

1 This is an insurance action arising out of the theft of
2 plaintiff's 2003 Hummer automobile (the "automobile"). Plaintiff
3 alleges that on or about June 2, 2008, the automobile was stolen
4 while legally parked and locked in or near the driveway of
5 plaintiff's residence. (Compl., Ex. A to Notice of Removal,
6 filed June 12, 2009, ¶ 7.) The fair market value of the
7 automobile at the time of the theft was \$46,000.00. (Id. ¶ 8.)
8 Plaintiff alleges that on June 2, 2008, plaintiff gave defendant
9 notice of the loss and that on June 12, 2008, plaintiff gave
10 defendant proof of loss; plaintiff further alleged that he
11 performed all the terms and conditions of the policy. (Id. ¶ 9.)

12 On February 10, 2009, State Farm denied plaintiff's claim
13 based upon defendant insurer's claim that plaintiff breached his
14 insurance contract by failing to produce copies of all text
15 messages made to and from his cellular telephone for the period
16 of June 1, 2008 and June 2, 2008. (Id. ¶ 10.) Plaintiff's
17 complaint includes allegations that defendant violated various
18 regulations through their actions and inactions.

19 On April 23, 2009, plaintiff filed a complaint in the
20 Superior Court for the State of California, County of Sacramento,
21 for breach of contract, breach of the implied covenant of good
22 faith and fair dealing, and bad faith. On June 11, 2009,
23 defendant removed the action to this court on the basis of
24 diversity jurisdiction. On June 12, 2009, defendant filed a
25 motion to strike.

26 Federal Rule of Civil Procedure 12(f) enables the court by
27 motion by a party or by its own initiative to "order stricken
28 from any pleading . . . any redundant, immaterial, impertinent,

1 or scandalous matter." The function of a 12(f) motion is to
2 avoid the time and expense of litigating spurious issues.
3 Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993),
4 rev'd on other grounds, 510 U.S. 517 (1994); see also 5A Charles
5 A. Wright & Arthur R. Miller, Federal Practice and Procedure §
6 1380 (2d ed. 1990).

7 Rule 12(f) motions are generally viewed with disfavor and
8 not ordinarily granted because they are often used to delay and
9 because of the limited importance of the pleadings in federal
10 practice. Bureerong v. Uvawas, 922 F. Supp. 1450, 1478 (C.D.
11 Cal. 1996). A motion to strike should not be granted unless it
12 is absolutely clear that the matter to be stricken could have no
13 possible bearing on the litigation. Lilley v. Charren, 936
14 F. Supp. 708, 713 (N.D. Cal. 1996).

15 Through this motion, defendant seeks to strike those
16 allegations in the complaint that reference alleged violations of
17 Insurance Code § 790.03 and California Code of Regulations, Title
18 10, § 2695. Defendant contends that such allegations must be
19 stricken because plaintiff cannot assert a private right of
20 action premised upon the Insurance Code or regulations. In his
21 opposition, plaintiff clarifies that he has "no intention of
22 asserting a private right of action premised upon the Insurance
23 Code nor regulations adopted under its authority." (Pl.'s Opp'n,
24 filed Aug. 20 2009, at 2.) Rather, plaintiff asserts that the
25 conduct referenced in his allegations relating to violation of
26 statutes or regulations form the basis of his bad faith claims.

27 Plaintiff's allegations relating to defendant's alleged
28 violations of the Insurance Code and the California Code of

1 Regulations consist of both reference to specific statutes as
2 well as the conduct that allegedly violated such statutes.
3 Defendant's motion seeks to strike the entirety of these
4 allegations, including both references to the statute as well as
5 defendant's alleged conduct. While the parties agree that these
6 statutes provide no private right of action and that the
7 violation of these statutes do not by themselves entitle
8 plaintiff to relief, the conduct alleged in these sections may be
9 relevant to plaintiff's claims. At this stage in the litigation,
10 the court cannot find that allegations defendant seeks to strike
11 are so wholly immaterial and without any possible bearing on the
12 action such that a motion to strike is warranted.

13 Accordingly, defendant State Farm's motion to strike is
14 DENIED.

15 IT IS SO ORDERED.

16 DATED: September 8, 2009



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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